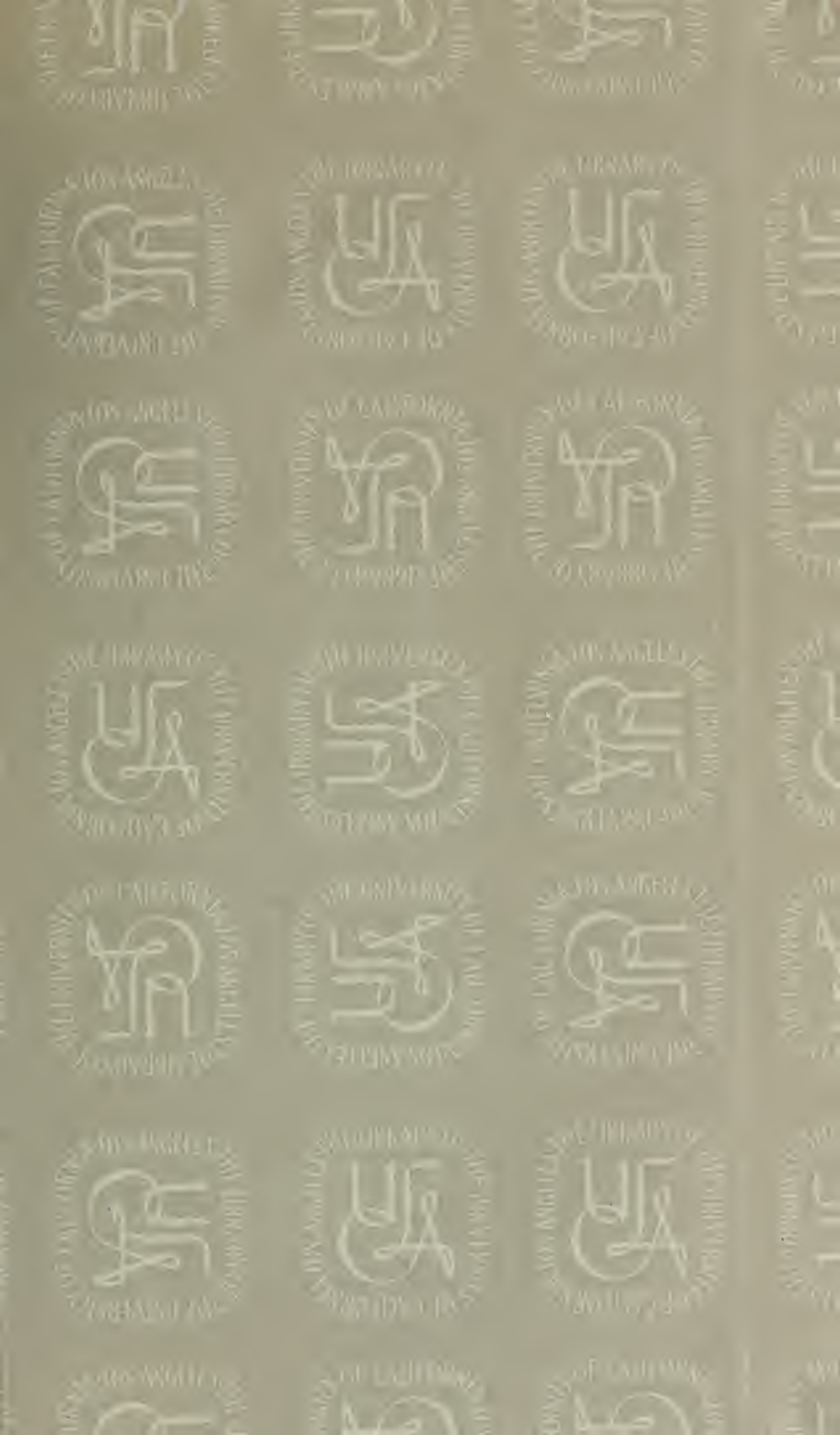

INVESTIGATION

INTO THE

FIFTEEN GALLON LAW

OF MASSACHUSETTS,

BEFORE A JOINT COMMITTEE OF THE LEGISLATURE,

WHICH BEGAN JAN. 29 AND CLOSED FEB. 20, 1839,

UPON THE

MEMORIAL OF HARRISON GRAY OTIS AND OTHERS FOR THE REPEAL OF THE LAW:

WITH THE ARGUMENTS OF

FRANKLIN DEXTER & B. F. HALLETT,

As Counsel in support of the Memorial.

PUBLISHED BY DIRECTION OF THE COMMITTEE FOR THE MEMORIALISTS.

BOSTON:
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1839.

INTRODUCTION.

It was not the original intention of the Committee who had charge of the Memorial of Harrison Gray Otis, Thomas H. Perkins, John Parker, Thomas Dennie, Nathaniel Goddard and forty-eight hundred others, inhabitants of Boston; to present to the public a detail of the proceedings before the Committee of the Legislature to whom that subject was referred; but the repeated misrepresentations made of the views of the Memorialists by those who in this unhappy division in society,—created by a busy few, the most intolerant and the least discreet,—have sunk the original benevolent purposes of this moral reform into a mere partizan struggle for a triumph in the experiment of establishing an inquisition over the consciences and appetites of their fellow-citizens, by aid of an obnoxious law; seem to render it a public duty to the present, as well as to future generations, to embody in a permanent form, the grounds of the objections to the law and the incontestible facts which were substantiated in the investigation.

It becomes the more important to discharge this duty because this great question is still open before the public for their further action, in consequence of the failure of the Legislature to repeal or modify the law at the last session, although repeated votes in both branches demonstrated that there was a decided majority against it, in its present form, and that it was not repealed solely because this majority, at the close of the session, and in the diversity of opinions, caused by a great number of different projects, were unable to agree upon a substitute.

It is also important, that while so much is published in support of the law, the reasons against it should be equally accessible to an inquiring public. The opponents of this law object to it on the highest fundamental principles of the Constitution; viewing it as reaching much deeper than a temperance reform; and as, in fact, an entering wedge, a plausible pretext for an experiment upon popular forbearance, to test

how far fanaticism and bigotry can go in getting the sanctions of law in tnis State to enforce particular creeds, and in reviving the long exploded dogma of persecution for opinion's sake, by virtue of pains and penalties.

They wish, therefore, to have their views fairly presented, and not distorted through the medium of prejudice and intolerance, which the advocates of the law attempt to place before the eyes of the people, whenever they are called on to look at this subject. These views will be found in the following pages, as stated in the Memorial, and in the arguments and evidence by which it was sustained before the Committee. To these positions, deliberately taken, and which will be firmly and perseveringly sustained, is now asked the candid attention of that enlightened and liberal portion of the people who have not lost their clearness of perception by looking at a single object through the narrow orifice of sectarianism and party spirit, until they can see nothing else; nor have learnt to regard the professed *end* in view as a sufficient justification of any *means*, however arbitrary and inexpedient, that may be resorted to by heated partizans, to sustain it: forgetting that temperance in legislation, temperance in the social relations, temperance in language and opinions, temperance in moral reform, and temperance in the enforcement of favorite theories, with becoming charity toward all who differ in opinion from the promulgators of new creeds and doctrines in meats and drinks as well as morals and religion, are quite as emphatically enjoined upon all good citizens as is that temperance which they suppose can be enforced only by a legally enjoined abstinence, under pains and penalties, from the temperate use of a particular beverage. In a word, the opponents of this law, as will be seen by a candid examination of the grounds taken before the Committee, oppose coercion as applied to voluntary morals, in every form; and their arguments against *law temperance*, are precisely the same in principle as have been urged in this Commonwealth, from the persecution of Roger Williams to the present time, against *law religion*. The flippant retort of the temperance zealots, which is their most ready and efficient argument, that the opponents of this law want *rum liberty*, is just as sound, and no sounder, as was the like argument of the persecuting bigots who prayed for laws to hang Quakers and banish Anabaptists, that the opponents of those detestable laws wanted *atheistical liberty*. We want that Liberty wherewith God and the Constitution have made us free, and he who surrenders it at the call of fanaticism, in a single point, be it in meat or drink, mind or matter, body or soul, is recreant to the principles and faith of those who won it, and is prepared to surrender the whole, whenever the tyranny of despotism or the intolerance of bigotry demands the sacrifice.

Boston, August 1839.

INVESTIGATION

INTO THE

FIFTEEN GALLON LAW

OF MASSACHUSETTS.

THE law against which the Memorialists protested, was passed the 19th of April, 1838, and is as follows:

An Act to regulate the sale of Spirituous Liquors.

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows:

SEC. 1. No licensed innholder, retailer, common victualler, or other person, except as herein after provided, shall sell any brandy, rum, or other spirituous liquors, or any mixed liquor, part of which is spirituous, in a less quantity than fifteen gallons, and that delivered and carried away all at one time, on pain of forfeiting not more than twenty dollars, nor less than ten dollars, for each offence, to be recovered in the manner and for the use provided in the twenty-sixth section of the forty-seventh chapter of the Revised Statutes.

SEC. 2. The County Commissioners in the several counties, may license for their respective towns, as many apothecaries or practising physicians as they deem necessary, to be retailers of spirituous liquors, to be used in the arts, or for medicinal purposes only; and the mayor and aldermen of the several cities may, in like manner, and for like purpose, license apothecaries, as retailers for their respective cities; and the Court of Commen Pleas in the County of Suffolk, in like manner, and for like purposes, may license apothecaries or practising physicians, as retailers in the town of Chelsea; which licenses shall be granted in the same manner, and under the same restrictions now provided by law for licensing retailers: *Provided*, That the number of persons so licensed shall not exceed one for every two thousand inhabitants, and in towns containing less than two thousand inhabitants, one person may be licensed: *And provided, further*, That in such cities and towns where there is no apothecary, or practising physician, such other person or persons may be appointed as aforesaid, as may be deemed proper by said County Commissioners; and no person, so licensed, shall sell any spirituous liquor to be drunk in or about his premises, on pain of the forfeiture provided in the first section of this Act.

SEC. 3. All licenses hereafter granted to innholders, retailers and common victuallers, shall be so framed as not to authorize the licensed persons to sell brandy, rum, or any other spirituous liquors; and no excise or fee shall be required for such a license.

SEC. 4. The provisions of all laws now in force, inconsistent with this Act, are hereby repealed.

SEC. 5. This Act shall take effect on the first day of July next, but shall have no operation upon any licenses granted previous to that time.

[Approved by the Governor, April 19, 1838.]

MEMORIAL

To the Senate and House of Representatives in General Court assembled:

When a law has been enacted involving a new and dangerous principle in legislation, unequal in its operation, at best of extremely doubtful constitutional right, inefficient in promoting its professed end, and tending to endanger a good moral cause, by exciting opposition and stirring up division as to the means for promoting that cause, in communities where all good citizecs were desirous to have a thorough reform in habit, and appetite effected by moral persuasion; it becomes the duty, as well as right of the people to ask of their public agents, the repeal of such law.

For these general reasons, the undersigned respectfully ask for the repeal of the law passed at the last session, entitled "An Act to *regulate* the sale of Ardent Spirits."

The title of that Act, we submit, is a misnomer, for instead of *reguluting*, as all acts on this subject have hitherto assumed to do, it entirely *prohibits*, in any form or under any circumstances, to be used except in the arts or for medicine, the sale of any liquid, "part of which is spirituous," unless sold to the extent of fifteen gallons, to be all delivered and carried away at one time

The question is not whether this law, if enforced, might or might not promote temperance, but whether in its application to a particular description of property and to the free agency of the citizen, it does not contravene all sound principles applicable to the possession, use, and enjoyment of property as a whole, and the exercise of plain personal and domestic rights that lie at the foundation of free Government. It is not a question merely affecting morals, but the highest constitutional guarantees of property and individual liberty.

We ask for the repeal of that law, on these grounds, for the following summary of reasons:

Because it assumes to prescribe the particular uses to which property lawfully acquired shall be put; prohibiting a use lawful in itself;—thus following the article when sold to the home and the closet of the citizen who buys, and instituting a new system of espionage upon his domestic acts.

Because the paramount laws of Congress authorize the importation of this article of marchandize and its incorporation into the mass of property, all of which is under a regulation of commerce, which power is wholly ceded to the United States by the States, and therefore no State can prevent such importation and incorporation into the mass of property.

Because when so incorporated it becomes like all other merchandize or chattels lawfully acquired, a part of that property which the Constitution of this State secures to every citizen, and guarantees to him "the right of acquiring, possessing and protecting," and in the "enjoyment" of which property, like all other, the Constitution says "each individual has a right to be protected by Society."

Because to proscribe by a State law, any particular description of merchandize which under the United States Constitution becomes the lawful property of a citizen of this State, and withhold from it the right of "enjoyment" secured to *all* property, on the ground that excess in the use of it is injurious to Society; is as manifestly an evasion of the guarantee of property rights, as it would be to deny the constitutional protection to jewels, plate, equipage, or any article of luxury, the excessive use of which, or its use at all by the poor, tends to demoralize and impoverish a community.

Because when the Constitution of this State and of the United States were adopted, the chattel now deprived of the most essential quality of property by this law, was fully recognized as possessing all the immunities attaching to other property; and hence it being the subject of lawful property under the supreme law of the land, for a State to deprive it of value by denying to it sale and transfer, is an act of Nullification of the laws of Congress, rendering the right of importation useless by destroying the right to sell.

Because, by thus singling out and virtually confiscating one species of property which one portion of Society believe it is unsafe for another portion to hold, except in large quantities, an arbitrary and despotic precedent will be established, by which the sacred right of acquiring, possessing and enjoying property, may be narrowed down to the mere will of a majority of the Legislature for the time being, as to the kinds and quantities of property they may think it safe to let the citizens enjoy.

Because the arguments in support of this law, drawn from the legal suppression of gambling, lewdness, lottery tickets and drunkenness, are not applicable to a law which prohibits the sale from any and all citizens to others, of a specific chattel or property, imported and incorporated into the mass of property under the sanction of the paramount laws of the land.

Because it assumes that the sale of a particular article of property lawfully acquired and held, is a crime, and then only punishes the alleged offence when little, but legalizes it in large quantities, thus contravening the plainest principle of right, by punishing crime in the inverse ratio of quantity.

Because this law in effect confiscates property lawfully acquired, in the hands of the purchaser from the importer, and annuls the importation laws. Hence if a State cannot directly prevent an article being imported and sold to its citizens in the first instance, would it not be unworthy a Legislature to adopt any evasive or cunning device to effect indirectly what the constitutional compact and the public faith due to the National Laws, prohibit being done directly.

Because, so long as the supreme law attaches to this article the right of being lawfully acquired, there can be no just distinction made as to the enjoyment and use of this right, beyond its abuse and the mere regulations of police, which does not apply to all other property in the hands of the citizen.

Because, if the Constitution of the United States does not prevent a State from passing any law, however arbitrary, for regulating its internal commerce between citizens, the Constitution of the State protects the citizen in the enjoyment of all lawfully acquired property, and to abolish the sale of it, is in effect a law of confiscation, because the value of property depends on what it will bring, and to abolish its transfer, abolishes its value.

Because it is no answer to this objection to say that the transfer of this property is abolished only in given quantities, but allowed, unrestrained, in larger quantities; which is only saying that if a citizen is able to acquire a great deal of property, he shall be protected in the enjoyment of its use and sale, but if he is able to acquire only a little property, he shall be punished for selling it to another, and also the individual who sold it to him.

Because the Constitution in securing the right to keep and bear arms, does not more directly involve the right to purchase, and sell such arms, subject only to proper police regulations, than does the provision that each citizen shall be protected in the enjoyment of property, lawfully acquired, involve the right of purchase and sale. Hence if the sale of lawfully acquired property may be forbidden to prevent its tendency to abuse in bad hands, may not the Legislature, should the Non Resistance Societies demand it, prohibit the sale of fire arms, in small quantities, lest they should be used in self defence.

Because this law makes another innovation upon settled principles governing the rights of property, in prescribing for what particular purposes of domestic and private use, property shall be sold, or shall not be sold. It says that any quantity of the proscribed property may be sold provided it is to be used in arts or medicine—that none shall be sold under a given quantity, to be used for any other purpose; but that it may be sold, to any extent and for any use, over a given quantity at a time.

We ask for the repeal of this law, then, as a dangerous precedent affecting the rights of property. We ask for that repeal, further—

Because it is a departure in principle from the uniform course of legislation upon this subject, under the Constitution, which has been to regulate and not to prohibit; former laws being founded on a matter of police, to govern places of resort, preserve order, and punish actual violations of law.

Because it is a false principle in penal enactments to punish an act, not criminal in itself, on the ground that it tends to crime in another, while at the same time the law freely furnishes this tendency to crime in large quantities, and only prohibits it in smaller.

Because the law is founded on another position as false as it is unjust, viz: that the moral sense is not as strong in the poor as in the rich, and that the former cannot without restraining laws, resist temptations that may be safely presented to the latter, without injury to the common good; thus assuming the odious distinction that the Legislature must take care of the poor, by guarding them against temptation, while the rich may be safely left to take care of themselves.

Because it is a libel on humanity to assume that the poor must be restrained in appetite and the rich indulged, when in fact it is the industrious classes with small means, who are trained by circumstances to self-denial and abstinence; while the rich are more exposed, from habit and means, to excess in indulgence.

Because it is a sumptuary law against appetite, always odious in any form, but especially so in this case, where, instead of restraining the luxury of the wealthy, it is aimed exclusively against the appetite of the poor, and freely indulges that of the rich; thus infringing the spirit of that provision which declares that the Constitution was expressly framed "to provide for an equitable mode of making laws."

Because voluntary principle is the only safe reliance in a free government, for the support of religion and the advancement of moral causes; and the professed object of this impossible law, viz: the suppression of appetite in a particular class, is as much beyond the reach of penal laws, as are the conscience and the internal will of man.

Because it is a law against moral agency, imposing punishment not upon any crime or offence, but upon an indulgence in appetite that may lead to crime.

Because the argument that Society has a right to prevent pauperism through intemperance its greatest source, no more justifies this law, than it would a law to punish any citizen who should keep or use the article at home—and, moreover, this argument is a libel on a majority of the people, in assuming that the pauperism which is engendered by intemperance, is confined to those who cannot purchase fifteen gallons at a time, while the higher classes, who indulge at their tables and sideboards, are in no danger of becoming a public charge.

Because this law is an alarming precedent, tending to revive that series of arbitrary, bigoted and outrageous restraints upon personal freedom, domestic rights and private opinions, known as the Blue-Laws of the old Colonies; and on this principle, whenever any sect in morals or diatectics happen to get a majority in the Legislature, they may pass laws to prohibit and punish all the indulgences they think proper to condemn.

Because there is obviously a dangerous tendency in the times to intemperate excess, in carrying out benevolent and noble objects of reform, which threatens to drive the sober and prudent and reflecting from all such useful associations—wherefore we conceive it is peculiarly the duty of the Legislature not to countenance a doubtful and vexed measure of reform having this tendency, and which, if persisted in, will encourage those who run into the wildest theories of moral restraint, to get up combinations and parties to force their particular creeds into the form of law.

For these, among numerous other reasons, we address ourselves to the calm good sense of the Representatives of the people. We pray them, as friends of temperance, not to endanger the healthful moral influences that were carrying forward that cause as rapidly as the condition of society would admit. We ask them not to forget that though temperance is a noble cause, Liberty and Equal laws are nobler. We assure them that this law must fail of its professed object, and will not succeed in restraining appetite which will be indulged by combinations and evasions to a greater extent than without this ineffectual attempt at restraint.

We ask them not to compel those who have uniformly sustained the moral cause of temperance and still desire its success, to rally against this measure in defence of a higher principle than temperance itself, the liberty of the citizen. Very many of the devoted, practical friends of temperance, solemnly hold this law to be a violation of fundamental principles. They deny its right, they doubt its constitutionality, they are satisfied of its inexpediency, and that it will react, and retard the cause rather than advance it. They cannot consent to do wrong that good may possibly come. They will rather wait for moral causes to operate, than force the end they wish to accomplish, at the expense of reaction and the soundest and plainest principles of Equal Rights.

Wherefore we pray the Legislature to repeal this law, and thus remove from the Statute Book, the first act of a Sumptuary law, which has been placed there since the adoption of the Constitution.

MR. HALLETT'S OPENING ARGUMENT.

B. F. Hallett opened the inquiry on the part of the Memorialists. His purpose was to present the reasons and facts on which the repeal of the law of 1838, prohibiting the retail sale of spirituous liquors, was asked for in the Memorial, and his wish was to confine the investigation strictly to the matter in hand, viz. whether the law in question ought to be repealed or not.

We disclaim the issue of Temperance and Intemperance. It would discredit the intelligence of the Legislature to treat this subject as if they desired to be instructed through a committee as to the blessings of temperance or the evils of intemperance. The question is not the evil, but the *remedy:* whether this law is a remedy for the evils that are connected with ntemperance in society, and whether it is such a law as ought to be enacted under any circumstances. I am aware that the attempt will be made on the other side, to represent the opponents of this law as the opponents

of Temperance, and thus, by making a false issue, preoccupy the favorable opinion of the Committee. In the outset therefore, I protest against this assumption; and so far as the evils of intemperance are concerned, the supporters of the law may if they choose, take our general cognovit, and thus relieve the Committee from the wide range of inquiry which that mode of treating the subject would lead to. The Memorial asks for the repeal of the Law on the very ground, among other objections to it, that it is adverse to temperance, and endangers the progress of a good moral cause. On this point we shall have much to say, and many facts to present.

The question is simply whether so long as the laws sanction the importation, acquisition and use, of this species of property; a moral act of self-denial, total abstinence from the use of spirituous liquors, shall be attempted to be enforced by a law of prohibition and penalty, or be left to moral influences under general laws of regulation. The object of all former laws on this subject has been to promote temperance, by regulating the sale to all: the aim of this law is to enforce total abstinence in a part, by prohibiting the sale to one class and allowing it to another.

The friends of the law claim an authority for its enactment under the injunctions in the State Constitution. To show that this claim has no foundation in the Constitution, it is only necessary to refer to the plain distinction between temperance and total abstinence; the one meaning a moderate use of an article of appetite or luxury, and the other an entire abstinence from such use. Temperance, when applied to any act or indulgence, implies that the virtue of temperance consists not in the absolute denial, but in the moderate use. It cannot therefore be applied to any indulgence, wrong in itself. We do not say that men should be *temperate* in gambling, vice, or crime; but that they should abstain altogether, because any participation, however moderate, is criminal. Consequently, by temperance, our fathers meant a moderate use of the luxuries of life, and as the Constitution must be interpreted by the manifest intent of those who framed it, it is plain that they never could have intended to enforce total abstinence from any description of food or drink, under the denomination of Temperance. This word which is used but once in the Constitution, is as applicable to eating as drinking, and it might with equal propriety be urged that the Constitution enjoins upon the Legislature to make laws to enforce total abstinence from all kinds of food not indispensible to life, as that it authorizes such laws in relation to drinks.

The State Constitution speaks of temperance but no where of total abstinence. The law in question is designed to enforce the latter, upon a particular class, who have not the means to get over it; and if the Constitution is to be appealed to for its sanction it must be shown that by virtue of the Constitution the enforcement of total abstinence by law comes within the province of the Legislature.

As the Constitution is so often referred to, and by a disingenuous perversion of this word *Temperance* from its true meaning, wrested into a seeming sanction of any law, however arbitrary, to prohibit the moderate use or sale of alcohol, it is proper to set this part of the inquiry to rest in the outset.

The State Constitution on Temperance.

The only use made of this word in the Constitution is the following.

"Art. 18. A frequent recurrence to the *fundamental principles* of the Constitution, and a constant adherence to those of *piety*, justice, MODERATION, TEMPERANCE and FRUGALITY, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government. The peop

have a right to require of their lawgivers and Magistrates an exact and *constant* observance of them in the formation and execution of the laws."

If this sanctions a prohibitory law against beverage or food, the "constant observance" of it enjoined, would require that total abstinence should be regarded in forming all the laws. This is sufficient to show that the *Temperance* here referred to is a quality; a virtue the opposite to excess in all things. With as much propriety might we argue that because the Constitution enjoins a constant adherence to *frugality*, therefore the Legislature ought to pass laws restraining the expenses of living, and prohibiting the sale of all unnecessary articles in housekeeping, to save people from the temptation of running in debt, getting insolvent and committing suicide. As well might we argue from this article that the *moderation* and *justice* it enjoins in the making of laws, render it the duty of the Legislature to repeal a law so immoderate and unjust as the prohibitory law under consideration. As well might we say that we ought to have an established religion by law, because the observance of piety is enjoined. The "fundamental principle" of *equality*, is the first principle to be referred to in making laws; and this principle the law of '38 violates. How then can the 18th article support it?

Another part of the Constitution relied on by the advocates of the law, is the 4th Article of the 1st Chapter in which "full power is given to make, ordain and establish all wholesome and reasonable orders, laws, statutes and ordinances, necessary for the good administration of the Commonwealth."

If this is to be construed without limit, it sets up a claim of irresponsible power in the Legislature, and abrogates the Constitution itself. If otherwise, it is begging the question to assume that this is a wholesome and reasonable law. It must not only be shown to be wholesome and reasonable, but to be "*necessary* for the good administration of the Commonwealth."—To be reasonable, it must be equal in its operation on all classes of citizens.

The 2d Section, Chap. 5, has also been pressed into the service of this law, which says,—"It shall be the duty of Legislators and Magistrates to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in dealings, sincerity, good humor, and all social affections and generous sentiments among the people."

The argument attempted to be drawn from this is, that because intemperance is adverse to the principles here recommended, therefore the Legislature must pass laws to enforce total abstinence. As well might it be argued that because wine is said to make men generous, good humoured and social, therefore the Legislature ought to encourage its convivial use.

But to place this matter beyond dispute, we have a contemporaneous exposition of the intent and meaning of the founders of the Constitution, which is the soundest and safest rule of construction, as to delegated power. The Convention that framed the Constitution of Massachusetts assembled in 1779. Two years before that, in 1777, the General Court of Massachusetts composed of many of the same individuals who were members of the Convention in '79, passed a law to the following effect, which may be found in the first Vol. Resolves of Massachusetts Bay for February 1777, p. 33.

"Resolve to prevent the exportation of rum and other articles out of this State, as well by land as water, passed Feb. 7, 1777.

"Whereas, the Rum, &c. now in this State are all *needed for the supply of the army and the inhabitants of this State*, It is therefore resolved that all exportation of Rum, Molasses, Sugar, Cotton Wool, Sheepswool, flax, salt, coffee, cocoa, chocolate, linen, cotton and linen, woollen and cotton goods of all kinds, provisions of all and every sort, shoes, hides, deer skins, sheep skins, and Leather of all kinds, as well by land as by water, from every port of the State, be stopped except to the different ports of this State.

And if any vessel shall be found having any quantity of rum, more than 60 gallons

to a vessel of 80 tons, for a three months voyage, and in that proportion for a larger or smaller vessel and on a longer or shorter voyage, being outward bound or found at sea, having sailed from any port in this State for any part of the world without this State; such vessel shall be a lawful prize for any person who shall take the same; and shall be condemned and sold in the manner provided for sale of vessels taken in carrying supplies to the enemy.

And if the Committee of Correspondence, Instruction and Safety, of any towns in this State shall *suspect* that any team is loaded with such article to be transported out of the State, said Committee are empowered and directed to stop all such teams till they can make proper inquiry, and to seize and file an information against the same, as forfeited, one half to the Committee and the other half to the State.

Provided this resolve shall not prevent the carrying of the article from this to any neighbouring State, as purchased at ordinary retail, either for the consumption of individuals or single families. And it is hereby recommended to the good people of this State to afford all possible aid to the Committees aforesaid to enable them to carry these resolves into effectual execution."

Resolved, that if it appear any article has been transported contrary to this Resolve, the owner shall forfeit the value, to be recovered by action of debt.

Mr. Hosmer is directed to procure 2000 copies to be printed, and cause the same to be printed in the Boston Newspapers."

In Council, March 26, 1777, it was voted,

Whereas, it is of great importance that there should be ample supply of RUM, sugar, molasses, cocoa, coffee, cotton, wool and salt, for the use of the army, and every impediment to their importation ought immediately to be removed, therefore Resolved, that Benjamin Greenleaf, Thomas Cushing and John Taylor, be a committee, &c. to consider the expediency of repealing an embargo upon all vessels in this State, and to consider what other measures are proper to be taken for procuring a supply of the articles above mentioned.

In the House, Mr. Dalton, Judge Cushing, B. Thompson, and Mr Phillips are joined, Walter Sheever, in place of Greenleaf.

Here, in an enumeration of all the staple necessaries of life, *rum* is placed foremost as indispensible for the use of the army in fighting the battles that won our liberties; and yet we are now told that the same men who passed that law, two years after framed a Constitution which enjoined it upon the Legislature to prohibit the sale of that article, under fifteen gallons, and to enact laws to enforce total abstinence from its use, by all except men of quality and estates!

I have no disposition Mr. Chairman, to join with our patriotic forefathers in their eulogy upon rum as the first article in a list of the necessaries of life, or as necessary at all, under any circumstances as a beverage; but to such extremes are ultra notions on this subject now carried, that it would seem incredible that the world could have stood, or a virtuous community have been found in it, with the toleratiou of rum; and yet these Resolves were passed, and were practiced upon, by the purest patriots and the wisest and best men of our Commonwealth, who sacrificed every consideration of self to the public good, and the loss of whose simple virtues is but sadly supplied by the mock morals and pharisaical pretensions of the present day.

After this exposition of facts, the friends of this law must look to some other source than the Constitution for enjoining its adoption as a duty, upon the Legislature.*

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* Mr. Hallett intended to have stated another fact nearly contemporaneous with the Constitution. The Convention of 355 Delegates, who adopted the U. S. Constitution in 1788, voted at the close of their labors, to proceed to the State House to proclaim the ratification and take an affectionate leave of each other. An invitation from a number of the inhabitants of Boston requesting the members of the Convention *to take refreshments* at the Senate Chamber, when the ratification should be declared, was read, and thereupon voted, that the thanks of the Convention be given to the inhabitants of Boston for their polite invitation, and that the Convention will attend as requested.

The Boston Centinel of February 9, 1788, gives the following particulars in conformation of the views the framers of the Constitution took of temperance:

"The whole Convention having been previously invited, partook with a number of the respectable citizens, of a decent repast, prepared in the Senate Chamber, and such

General Principles.

I will now proceed to state the general grounds on which we object to the law of 1838, and ask for its repeal.

It involves a novel and dangerous principle in legislation as applied to personal rights, and acts lawful in themselves.

It is of doubtful constitutional right, and directly unconstitutional, as an unequal law, and as an infringement of the power of Congress to collect revenue.

It aims at an end the law cannot reach, and is ineffectual in promoting its professed end.

It endangers a good moral cause by exciting opposition and stirring up division and party strife.

It divides the community politically in an injurious controversy as to the means for promoting total abstinence, whether moral and persuasive, or penal and coercive.

It creates a new conflict in society and raises up two strong opposing parties, where before, all good citizens were united in desiring a thorough reform in the customs of society, and the indulgence of appetite.

It retards and diverts from their true course the healthful moral influences that were carrying forward the temperance reform as rapidly as the condition of society and the permanency of the cause would admit.

It compels those who have uniformly sustained the temperance reform as a moral cause, but who disclaim its attempted control of legislation by political action; to rally against this law in defence of higher principles than temperance; the liberty of the citizen, and the fundamental rights of property.

It thus tends unavoidably, to identify actual opposition to Abstinence as a moral cause, with the just opposition to an alarming encroachment by this specious legislation, upon personal rights and first principles, that lie at the foundation of free government.

It compels those who are jealous of popular freedom and the right of self government, to remember that Liberty and License laws have subsisted together for centuries, but Liberty and arbitrary laws, never.

It disregards the rational progress of moral causes, and impatiently attempts a legal enforcement of self denial, at the expense of inevitable reaction, and without respect to sound and settled principles of equal rights, or equal laws.

It seeks for precedents of justification in the most doubtful and long exploded applications of legislation to restrict rights and control personal action; and is a backward movement in government, assuming to make men abstemious as bigotry formerly undertook to make men religious, by pains and penalties.

The law is moreover *based on a false principle of legislation;* false because it cannot be applied to property or right in general; and false, because it becomes absurd and unbearable the moment it is attempted to carry it out to its legitimate and unavoidable conclusions.

The doctrine of the law is this—that because drinking a certain liquid to excess injures the individual, and he injures society, therefore the law

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a spirit of joy, union and urbanity was diffused, as if continued, must be attended with the most happy consequences. The toasts given were truly conciliatory, and *were drank* with sincerity, *by every one present.*"

When President Washington made his grand entry into Boston, October 29, 1789, one of the most prominent in the display of trades and occupations in the immense procession that welcomed him, was the whole body of Boston distillers, preceded by Mr. Thomas Hill, with banners. Device on the flags, a Still with the Distillers Arms. Motto, "drop as rain, distil as dew."

must prohibit it as a beverage. If this position is sound, it must follow that wherever it can be shown that any article of luxury of food or drink is unnecessary and injurious to an individual or his family, the law must interpose and prohibit its use by all those who cannot afford to ruin themselves without ruining their families.

Again, it is a law originating not in philanthropy, and benevolence, but in *distrust* of moral influences and *contempt* of the capacity of men with small means to practice wholesome self denial.

It is a law *against moral agency*, assuming not as all other laws do, only to punish crime when committed, but to restrain by penal enactment, the exercise of discretion in the moderate use of a beverage, because it may be used to excess, thus denying to one class a right,because others use that right to do wrong.

It punishes the *moderate sale* as a crime in order to prevent the temperate use, and yet does not punish the *use* at all until it amounts to drunkenness, when in fact, it is the *use* and not the sale that is the cause of drunkenness.

The seller is only accessory to the use ; the user commits the overt act, yet the first is punished, though no injury is proved to follow his act, while the latter is punished only in case of excess and positive wrong done.

As well might the law punish those who keep gambling houses and implements, and not those who gamble, as to punish those who sell and not those who drink.

This law assumes to enforce prevention of an act, not wrong in itself, but on the ground that it may tend to wrong in another ; thus punishing an innocent act in one man without regard to criminal intent, and only because another may commit a crime ; as if the law should punish him who innocently sells edge tools because they may be used to maim or murder.

It divides society morally by a false and invidious line—assuming that self control is coextensive with pecuniary means, denying its existence as a rule of action to be trusted in those possessing small means, but admitting its unlimited and safe influence with those of large means.

It affirms the necessity of restraining the appetite and taking care of the morals of the poor by law, but leaves the rich to take care of their own morals and appetites.

It is a sumptuary law ; a species of legislation always odious in the most arbitrary governments, and never to be tolerated in a free one. It is a sumptuary law even in the technical sense of that term, for it assumes that a certain article of ordinary consumption is unnecessary, and undertakes to prohibit the indulgence in it by one class of society who heretofore have had it in any quantity they chose to buy it.

It is therefore a sumptuary law in restraint not of excess, but of a supposed tendency to excess in the indulgence of an appetite not unlawful in itself.

It is moreover a sumptuary law to restrain indulgence and unnecessary expense, exactly in the inverse ratio of the means to indulge and buy.

It prohibits an act (the sale of a pint of ardents) which is just as innocent as the sale of fifteen gallons, which it allows ; and while it claims authority to prohibit or restrain, solely on the ground of the injurious tendency of an act innocent in itself, it most absurdly prohibits only in small quantities and permits in large quantities. Thus it undertakes to punish an alleged offence to society in the inverse ratio of quantity.

It differs from all former laws on this subject, the former regulating and this prohibiting ; the former limiting the *persons* who might lawfully sell but never the *quantity* they might sell—the former securing to a man of six cents the same privilege of buying according to his means, as to the man

of millions, while this law *outlaws* every man who cannot command at one time, at least six dollars.

This law undertakes to prohibit the traffic on the ground of common good, and yet prohibits it only to those who cannot raise six or ten dollars at a time for an unnecessary expense; as if the common good required that only *common* men should be restrained by pains and penalties.

The only evil to society which can warrant any law regulating this article as distinguished from other articles of food or drink, is the intemperate use. That evil, it is assumed, grows out of the moderate use, yet the law does not punish the moderate use at all, only the *moderate sale.*

Hence if the public good demands the suppression, by law, of all tendencies to excessive use, it should punish the moderate *user* as well as the moderate *seller.*

If there were no sale by retail, still the moderate use would continue, but if there were no use there would be no sale at all. The law therefore, if it means to suppress the evil, should go directly to its source, the use, and suppress that by pains and penalties. The fact that it cannot do so, is conclusive that the attempted prohibition of sale, while the use is permitted by law, is founded on a false and ineffectual application of legislation.

The law is *invidious and unequal,* because it is so framed as in intent and practice, if enforced, to be a prohibition to one class and a free indulgence to another.

It is invidious as to the kinds of beverage to which it is applied; for it says to those who prefer alcohol in the form of rum, brandy and gin, that they must be restrained, while it says to those who prefer alcohol in the form of wine, that they may be freely indulged in any quantity.

It is invidious because those who made the law have reserved to themselves the means of indulgence, by not extending the restriction to a quantity beyond their reach at any time, while they have prohibited the sale of it in quantities within the compass of the means of a large portion of their constituents.

If it be, as is contended, only a partial prohibition, then it is a partial law; for if the common good demands prohibition at all, to be equal and just, it must be universal, both in selling and buying. Ability in means, to do an act on a large scale, cannot make that act venial, while the same act, on a small scale, by those of small means, is made a crime.

These are some of the leading principles in morals, equity, and law, which demonstrate that the Act of 1838 prohibiting the sale of an article of merchandize in less than fifteen gallons at a time, is based on a false doctrine in legislation.

Property Rights.

The law is equally odious and objectionable in its application to PROPERTY RIGHTS, for the following reasons:—

It singles out a particular description of lawful property and merchandize, and deprives it of its ordinary uses and sale by force of law.

It thus interferes with and abrogates, as to this kind of lawful property, the universal right of acquiring, possessing and enjoying property. In this respect it evades, and arbitrarily suspends, and as I hold, openly violates one of the fundamental immunities of the State Constitution.

It also evades, and in effect nullifies the United States Laws of importation, because the power it claims to prohibit the sale of property except from the importer to the next hand, if enforced, would in fact destroy importation.

It prescribes a limited use to which alone lawful property shall be put,

prohibiting its ordinary, lawful use, and that not by punishing the use but by punishing the sale for that use.

It thus makes even a licensed seller responsible for the particular use to which his customer puts the article, subjecting him to a legal inquisition as to knowledge he had of the intended lawful use when he sold the article; subverting all principles of criminal jurisprudence which never punishes *intent* in one man connected with the act of another, unless that intent is accessary to a criminal act.

It is absurd and contradictory in the application of prohibition of the use of this property: 1st, permiting it to be sold in any quantity to be used in arts and medicine; 2d, punishing the sale for any other use, in small quantities; and 3d, permitting the sale in large quantities for any use whatever.

It assumes that the sale is a wrong to society. It then sanctions this wrong in *gross*, or when committed to indulge the rich, and punishes it only in detail, or when committed to indulge the poor.

It allows an unrestrained indulgence to all who can enjoy it largely, and denies it to others merely because they can procure it only sparingly, or in small quantities at a time.

It is admitted by those who sustain this law, that the evil is not in the article, which is no nuisance or offence in itself, like infected goods or tainted provisions, but in the appetite for its excessive use. We say, therefore, that you cannot on any known principles of equal and just legislation, treat this lawful property as a nuisance or a source of physical contagion under the health and quarantine laws; nor as an article unsafe to be kept in shops and warehouses, under the police laws which regulate the fire department.

The evil being not in the *thing*, but in the appetite for it, you cannot by law, destroy or remove this thing of lawful possession, in order to destroy the appetite for its abuse, with any more right than you could destroy or remove all personal property, to prevent robbery and theft. You cannot punish the propensity to do wrong until wrong is done. You cannot deprive one man of his lawful rights, because his possessing and using them may tempt another man to sin, The tendency to crime, while generating in the mind—the propensity or the habit of not unlawful indulgence—are not subjects for penal laws, but for moral influences. So also is the appetite or habit, connected with the moderate use of ardent spirit, while generating the vice of intemperance. It is an evil, but like many other evils, beyond the reach of a statute. Hence we say, in the advancement of temperance, which depends on the control of appetite, on voluntary abstinence; trust to the voluntary principle, or you can establish nothing permanent. Rely on moral influences and enforce no law beyond wholesome, reasonable, just and uniform regulations.

This is the distinction we take between the laws of regulation of two hundred years standing, and this new law of prohibition; and if these positions are sound in matters of legislation, it follows that this law ought not to be tried at all as an experiment, to see whether it will fail or succeed. We deny the moral or constitutional right of the General Court to make experiments in legislation, trenching on fundamental rights, merely to test a doubtful theory whether the lawful appetites of a particular class of citizens cannot be exterminated by force of law.

We object to this law as useless and overmuch legislation; the first in the revival of that series of personal restraints imposed under the Colonial system of Blue Laws, which sought to enforce by penal enactments, sanctimonious observances, and tie up every domestic and private indulgence.

We oppose it as a dangerous legislative premium held out to ultras in all the extremes of moral doctrines and reforms of the day, to get up combinations and sects, in order to control legislation and press their particular creeds into the form of law.

We oppose it because it assumes as a principle of legislation, that *sin*, evil, exists in the inert object that may be abused to sin, and not in propensity and the human heart, and thus carries legal coercion over the line of voluntary morality.

We oppose it because it creates an artificial crime in order to punish it, and by a monstrous absurdity in law and morals, makes one half of an act which cannot be consummated without the consent of two parties, a crime in one, and no offence in the other.

The Law is Inexpedient, as well as Absurd and Unjust.

It is inexpedient even if it could be enforced.

It is inefficient, for it cannot be enforced.

Regarded, then, by the test of every fundamental principle in free government, this statute is wrong in law, wrong in morals, wrong as it effects private rights, and wrong as applied to principles of human action.

It Involves a new Principle in Legislation, Prohibition, as Applied to the Sale of Property for Lawful Uses.

The *use* as a drink is *not yet* made a crime, and yet the selling of it for such use, is declared an offence, punishable by severe penalties. The prohibition is not applied solely to that portion of the property which may become unfit for use, as is the case in the prohibition of sales of spoiled provisions and adulterated liquids, but is extended to the whole article in its purest state. No legislation on this principle, has ever before been applied to this or any other article of merchandize.

No Former Law ever Abolished the Sale in any Quantity for any Use.

It only regulated houses and occupations as a restriction of police, and limited the number of sellers, not the quantity in which the buyer should be compelled to purchase, or not at all.

The utmost extent to which any former law, through a period of two hundred years, ever went in prohibiting the sale for use, was to make it penal to sell to the drunkard who abused the use. This law makes it a crime to sell to the most temperate user; and if it be sound in principle, that principle should be extended to the sale of every article of luxury or use which is susceptible of being abused to the injury of the buyer; because, if alcohol, which may be dispensed with in society, and which may be abused, is to be prohibited in its moderate use because its use results in more injury than good, then every article of luxury, pride or indulgence, which tempts to excess in any one class of society, must be prohibited, in order to prevent crime by removing temptation.

It does Involve a New Principle.

The attempt of the advocates of this law to deny that it involves a new principle of legislation, shows that they dare not test it on its true basis, but find it necessary to deceive the people into a belief that it is in fact just like the old laws on this subject. Why then did they ask for a new law, if they do not want to enforce a new principle?

The Old Law Regulated Occupations and Trades.

The law of '32 was a law of regulation as to trades and occupations. It provides (chap. 47 Revised Statutes,) that "no person shall presume to be an Innholder, common victualler, or seller of wine, brandy, rum, or any other spirituous liquor, to be used in or about his house or other buildings, unless he is first licensed as an Innholder or common victualler, according to the provisions of this chapter, on pain of forfeiting one hundred dollars." "And if any person, not licensed as an innholder or victualler, shall sell any wine or spirituous liquor, or mixed liquor part of which is spirituous, to be used in his house, he shall forfeit twenty dollars." The license also prescribed the particular *place* "where the licensed person shall exercise his employment."

It is, therefore, the use in the house and the specific employment which were regulated, and not the sale forbidden, under the former law. It applied the restriction or regulation to a particular place in which a certain occupation might be carried on, but did not assume to abolish the occupation or to confiscate the property, in its ordinary use.

The new law prohibits, and is nothing but prohibition.

The new law is solely and exclusively A LAW OF PROHIBITION. It assumes to legislate on this property, (which is as much an article of lawful merchandize as are teas, coffee, or cloths,) by a special act, applied to no other property, and its only legislation is *prohibition.*

This is obvious from a single consideration. This act virtually repeals all others on the same subject, and will be found so in practice, because it is inconsistent with all other acts. Strike it out, and there is no law of prohibition affecting this article of property more than any other subject of sale and transfer. The act does not authorize the sale of fifteen gallons and upwards, because without it the sale of that quantity would be governed by general laws, as the sale of molasses or vinegar is.

It follows that the entire and sole operation of the law is to *prohibit* the sale under fifteen gallons, and of course the whole intent of the law is to prohibit, for without it there would be no prohibition under fifteen gallons, and with it there is none over.

Self contradiction of the supporters of the law.

The disingenuousness of the attempt of the supporters of the law to disclaim the doctrine of prohibition in this Statute, which they now find to be odious as a new and dangerous principle in legislation, is the more apparent from the fact, that the very prohibition they now *deny*, was the entire thing they asked for when this law was forced through the Legislature by a sort of surprise.

The Memorial asking for this law, signed by the same men who now deny that prohibition was the intent, and is the principle of the act; prayed the Legislature "that *all* laws authorizing the sale of intoxicating liquors may be *repealed*, and that such sale may be made *penal.*"

The Committee who reported the law which grew out of that application, say that "this proposition suggests the repeal of laws which have existed from the earliest period of the history of the Commonwealth,"—that "the inefficiency of these laws to restrain the improper traffic in spirituous liquors has arisen from the fact that they have professed to *regulate*, but not to *prohibit* the sale. The laws have not limited the *quantity* to be sold, but only the *persons* who should be permitted to sell them. The modification of these laws, which the Committee propose, is the *prohibition of the sale of spirituous liquors as a beverage.*"

[House Document for 1838, No. 53.]

Here then, those who asked for the law and those who reported it, declared that their object was to introduce a new principle, never before embraced in the legislation of two hundred years on this subject, viz: the substitution of prohibition in certain drinks, instead of the regulation of particular occupations and employments. Instead of the uniform regulation of *places*, they apply a direct disqualification as to sale and transfer, to an article of lawful acquisition and property. If this is not a new principle in legislation, there can be no new application of penal laws to any acts heretofore lawful.

Test it by this one fact. For two hundred years there has never been a law in existence which deprived any citizen, rich or poor, of the right to buy his money's worth of this species of property, for any use he chose to put it to. This law assumes to deprive him of the right, under any circumstances, to buy, except for uses prescribed by law, the quantity he may want, or which he may have the means to purchase, unless he can command a certain amount of property or credit.

Comparison with the Game Laws.

In this it partakes of the odious principle of the privileged game laws of Great Britain, which require a property with an income of £100 per annum to enable a man to shoot a partridge, or "being the son and heir of an esquire or person of superior degree." Just so this odious law affecting appetite, requires that in order to be qualified to drink rum and brandy, a man must possess sufficient property to be enabled to expend ten or fifteen dollars at a time, when the value of as many cents may be all he wants, or he must be the son and heir of "an esquire or person of superior degree."

The Law as Applied to Employment.

The law is alike unjust and dangerous in its principle of prohibition, if applied to trades and occupations. To abolish a trade which has existed two hundred years, and is sanctioned by the laws and treaties of the United States, or to take this trade from one class and give it to another by law, is surely a new and dangerous principle in legislation. No trade can rightly be abolished that is not a nuisance, and even then it can only be restrained. So that there can be no greater absurdity than to contend that a trade by retail in a particular article of lawful property is a nuisance, but its wholesale no offence whatever, and that, therefore, the first must be prohibited and the last allowed!

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* Justice Blackstone, in his Commentaries, says of these game laws, that they are founded on the most unreasonable notions as to property, and are productive of tyranny to the common people—a bastard slip of special legislation. In King John's time these forest laws were so warmly kept up that they occasioned many insurrections.

The parallel between the game laws of England and this fifteen gallon law of Massachusetts, holds good in other particulars. Blackstone says of the former, that this offence, which is constituted by an act of Parliament, is of a very questionable nature, and yet it is an offence which the sportsmen of England seem to regard as the only matter of general national concern, *associations having been formed* all over the kingdom to enforce the law upon all persons, unless they be people of such rank and fortune as the *law does not reach*. But those *indigent* persons who violate the law without having such rank or fortune, are severely punished, and these punishments are implacably inflicted by petty tyrants, who are raised up like little Nimrods in every manor. He adds, that the only rational footing upon which rural sports can be considered as a *crime*, is that in *low and indigent* persons it promotes *idleness* and takes them away from their proper employments, which is an offence against the public police and *economy* of the commonwealth! [4. Blk. Com. 174, 415, 423.] This is just the sort of *rational footing* upon which the fifteen gallon law is placed; viz. that it indulges the rich and enables them to control the appetites of the laboring classes, for fear that they should be idle, and thereby become chargable to the "esquires and persons of superior degree," who can enjoy their fifteen gallons and their choice wines at their leisure!

It is a Retrograde Movement in Liberty.

It is another grave objection to this law, that it is a retrograde movement in the principles of free and liberal legislation. It goes *back* for precedents to the worst laws under the worst administrations of government. No liberal or enlarged act of legislation is ever cited in its support; but the old Colony Blue-Laws, of the deepest color, and the most questionable acts of our existing code, are the only parallels that can be found to prop it up.

The Old Colony Laws all Licensed.

But all the Colony laws, from 1633 and 1645, down to the adoption of the Constitution, merely regulated the *places* where the trade might be carried on, but did not abolish it in any quantity or for any use. No law ever existed, before this, that did not license for any use, or that prohibited the sale in any quantity for any use except by unlicensed persons. The oldest law on record upon this subject, that of 1633, enacted that "the person in whose house any were found or suffered *to drinke drunke*, be left to the arbitrary fine and punishment of the Governor and Council, according to the nature and circumstance of the same." [Old Colony Laws, page 31.]

This law was at least just and equal, for it applied to the "esquires and persons of superior degree," as well as the poor man; but it would not suit our modern reformers in their private or public entertainments.

There is, however, one law, precisely in point, of which our opponents should receive the full benefit in their research into the arbitrary and absurd enactments of Colonial legislation. It was passed in 1669, and was known as "the gentleman's act,"—and was to this effect: though even this law protected the licensed dealer in any quantity.

"It is enacted by this Court, that henceforth no persons shall have liberty to bring any liquors into this government for themselves or others, to give or sell, but such as are licensed, more than for their own particular use, which shall not exceed *six gallons* in the year; and each man's that is so brought in, shall be distinct in vessels one from another, and in case any do, it shall be forfeit or the value thereof. But if it appear that *any man of quality* whose condition calleth *for further expense in his family*, that then THIS LAW SHALL NOT REACH THEM: only this is to be understood that under pretence of this hee shall not give or sell to be carried abroad, except it be soe that the ordinary keepers have none to supply the necessities of them that are sick." [Colony Laws, page 165.]

This is the exact prototype of the present law, its very form and pressure, except that your law is more illiberal and aristocratic, for it will not allow the man of moderate means and appetite to provide six gallons or less, but cuts him off, and says, "that if it appear that any man of quality whose condition calleth for further expense in his family, wants *wine*, or fifteen gallons of spirits for his annual supply, *then this law shall not reach him!*"

Restrictions on Domestic Rights.

But if the Colony laws are to be cited as good precedents for this act, they are equally valid in other arbitrary restrictions upon individual and domestic rights, and where would that lead us in legislation? By this rule the importation of tobacco might be prohibited and its use punished. [Colony Laws, pages 59, 70, 87, 252.] So "if any shall make any motion of *marriage* to any man's daughter or mayde servant not haveing first obtayned leave and consent of the parents or master so to doe, shall be punished by fine or corporal punishment." [p. 61.] "And whoever shall inveigle or endeavor to steal the affections of any man's daughter, pupil or maid servant without his consent, he shall be punished by fine of five pounds or corporal punishment." [p. 272.]

In the same spirit, it was enacted that no single person should live by himself or in any family but such as the Selectmen approve, and families were to be periodically inspected by selectmen; a provision, by the way, that may be very necessary in the enforcement of this fifteen gallon law, to

ascertain to what uses the liquor bought of apothecaries is put in the domestic arrangements of the purchaser.

The Colony had Unlimited Powers—the State has not.

The prominent distinction between the Colony Laws, touching this species of property called spirituous liquors, and State Laws, is this. That the General Court of the Colony had unlimited power to prohibit importation as well as sale or use, there being no paramount revenue laws; while the State has no power to prohibit importation and sale under the supreme laws and treaties of the United States, and may virtually *nullify* these laws if it can do *indirectly* what it cannot do directly, abolish the importation by prohibiting the sale.

Laws under the State Constitution, and Effect of the United States Constitution.

Up to the period of the adoption of the Confederation of the States in 1778, each State had unlimited power to prohibit the importation of any article of commerce. The Confederation took from each State any power to lay imposts or duties that should interfere with treaties made by Congress. The Colony of Massachusetts Bay had enacted laws *regulating* the sale of ardent spirits, wine, beer and cider, in 1645, 1695, 1698, 1712, 1761, 1763. But not one of these laws ever prohibited the sale in any quantity or for any use; and instead of preventing its importation, as they then had power to do, we have seen that in 1777 they encouraged importation and prohibited the carrying of rum out of the State, because there was no more in it than was needed for the army and the inhabitants.

In 1780 the State Constitution was adopted, and the first law after that was the act of 1786, "for the due regulation of licensed houses." This act was one of regulation merely, and did not prohibit the sale of the smallest quantity for any use. It applied, as all similar laws ever had done, to *employments and places*, which were taxed and regulated; and not to persons or property, as the present law does.

In 1788 the United States Constitution was adopted, which gave to Congress the exclusive regulation of commerce with foreign nations and among the several states; and decreed that the laws and treaties of the United States, shall be the supreme law of the land, and the Judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding; and the State Judges shall also be bound by oath to support the United States Constitution.

From this time the regulation of the commerce of the people of Massachusetts with foreign countries and other States, in alcohol as well as other merchandize, was exclusively vested in the United States; and from that time, until the law of 1838, no act of prohibition interfering with the importation by prohibiting the sale in any quantity or for any use, was ever passed.* Acts have been passed on this subject since the adoption of the United States Constitution, in 1792, 1813, 1818. 1831 and 1832, but they wereall acts of licensing for sale, without any restriction in quantity or use, and went to promote and not to prohibit the sale of lawful property lawfully imported, under the Supreme Laws of the United States.

The present law is virtually, though indirectly, assuming the whole power affecting the article of merchandize in question, which the State would have had, if no concession of power had ever been made to the United States; for if the State can pass laws to abolish the sale of an article, it thereby abolishes the importation. If it can abolish it in part, it can in whole.

* Judge Story says, in New-York *vs.* Milne, 11 Peters 107,—"the power to regulate commerce given to Congress, is exclusive, an d not concurrent with the States."

This Law Assumes Universal Guardianship over Private Moral Agency.

The only prohibition introduced into former laws, was the prohibition of sale to drunkards, spendthrifts, &c. whose health, in the opinion of the Selectmen, was injured by abuse. This was founded on the principle of guardianship, and applied only to individual cases, upon positive evidence in each case, where moral agency had been subverted by the vice of the party put under guardianship. If the Selectmen made this restriction upon any individual without cause, they were liable in an action for damages. It did not punish for fear a man would do wrong, but punished and disqualified only for the wrong done. The present law assumes that *all poor men* are incapable of self-control, and puts them under a general guardianship before a single act of indiscretion is committed. It says that because some men who cannot buy fifteen gallons *may* do wrong, therefore *all* men of limited property, shall be deprived of the free agency of choosing between right and wrong in this matter.

In a word, all former acts established no direct monopoly, gave no exclusive privileges, nor applied any disqualification to lawful property. They imposed a tax on those who should choose to exercise a particular trade or calling, as a law of excise, and they regulated the places in which it should be carried on, as a law of police. The present law forbids the sale of lawful property by any person, for ordinary uses, and permits none but a particular *profession*, who never sold it before, to sell it in ordinary quantities, for any use whatever.* It is *neither a law of excise or police, but sheer arbitrary power!*

It is Wrong as a Law of Prohibition, because it is Partial.

It is plain, then, that this act oversteps regulation and becomes prohibition. As a law of prohibition, (even conceding the power to make it,) it must be equal and consistent, for it can be justified only on the plea of *necessity* as above all law, viz: that the evil is so great the common good demands prohibition. To be consistent and equal then, it must be universal. That is, if the Legislature has the power to prohibit an evil, by trenching on individual and property rights, it is unjust to apply the prohibition to any class of society, or to one cause of the evil, and tolerate it as to the rest. If, therefore, intoxication be the great evil, and the Legislature is bound to prevent it by prohibiting the sale of the cause of intoxi-

* Chief Justice Parker says, "The Legislature for thirty years has exercised the right of exacting a sum of money from Attornies and Barristers at law, vendue masters, *tavern keepers* and *retailers*, which has been applied to the privilege of using particular branches of business or employment, such as an auctioneer, Attorney, *tavern keeper*, or retailer of spirituous liquors." [And he adds, which shows how much wiser some people affect to have grown who ridicule the claim of natural right set up by the Memorialists against the prohibitory law.] "For every man has *a natural right* to exercise *either* of these employments *free of tribute*, as much as a *husbandman* or *mechanic* has to use his *particular calling*." [12 Mass. Rep. 256, case of the Portland Bank.] So that, according to the views of the Supreme Court in that case, the Legislature has the same right and *no more*, to tax the employment of a farmer or mechanic, as of an attorney, auctioneer, tavern keeper or retailer of spirituous liquors; and if there is the same right to tax one as the other, there must be the same right, and no more, to *prohibit* the one as the other. Unless, then, the Legislature has power to decree that no *farmer* shall sell less than fifteen bushels of grain or fifteen pounds of pork to be used for food; and that no mechanic shall build a house for *use* as a dwelling that costs less than $15,000; it follows, by the above decision, that the Legisature has not power to prohibit the sale of any other species of property for its ordinary uses. The Constitution has no where made any distinction in the general protection of all lawful property, and unless the contrary is shown from the Constitution, the reasoning of Chief Justice Parker is conclusive against the power, now for the first time in our history attempted to be used by the Legislature in proscribing a particular employment which the supreme laws of the United States sanction; and in singling out a particular description of lawful property for confiscation or disqualification.

cation; that prohibition to be just and equal, must be universal as to all classes of men and all descriptions of intoxicating beverage.

There is no necessary limit up to fifteen gallons. The pretence that the Legislature could not go *farther*, is utterly false, if it be true that they could go so far. There is nothing in the United States laws to limit the power to prohibit fifteen gallons any more than fifteen thousand gallons. This prohibitory law of 1838 says, that *no person* shall sell in less quantity than fifteen gallons, thus including the importer as well as retailer. But all agree it is void as to the *importer*. He may sell to the next of hand, and cannot be restrained but by the laws of Congress.

The ground taken by the supporters of the law then, is, that when the property passes from the importer, it becomes subject to all State regulations affecting internal commerce, and cannot be reached by the laws of the United States. It must follow, if this be sound, that if the State has power to abolish internal commerce as to fifteen gallons, and as to rum, brandy, and spirituous liquors, it has power to abolish this commerce entirely, as to any quantity, and as to any articles of property. The assumption of State power, therefore, if good for fifteen gallons of brandy, is good for every description and quantity of liquor, and for every kind of property that is the subject of sale; so that it amounts to an omnipotent power in the Legislature over the internal commerce of the citizens of a State, to prohibit the sale and transfer of *any* and *every* kind of property between man and man, except barely from the importer to the next buyer, who may buy but cannot sell again.

The power, then, being supreme, if it exists at all, why is it limited to fifteen gallons, and why confined to alcohol in *spirits*, and not extended to alcohol in wines, cordials, and fermented liquors? If the Legislature has supreme control over any article of importation the moment it passes out of the hands of the importer, it can stop its transit from the purchaser to another in any and every quantity, whether it be a cask of brandy or a bottle of wine, a bale of goods or a yard of muslin.

The power, then, if it exists at all, to prohibit sale of a lawful property from citizen to citizen, must be supreme and unlimited. It follows, therefore, that having the power of entire prohibition, if it have any power to prohibit at all, this prohibitory law, which denies the sale in small quantities and permits it in large, and applies only to the drink of men of small means and not to that of the rich; is not only a palpable violation of equal rights and equal laws, but is false in its sole pretence of right, viz: the common good; for it is worse than folly to pretend, as this law does, that it is for the *common good* that men should not get drunk on rum, brandy and gin, but *is* for the *common good* that they should be allowed to get drunk on wines, cordials and fermented liquors—that it *is* for the common good to restrain men who cannot buy fifteen gallons at a time, and is *not* for the common good to restrain wealthier men who have the means to buy that quantity at pleasure!

Plainly, then, if argument can amount to demonstration, the law is wrong as a law of prohibition. It is either *too much*, and therefore unconstitutional, because it violates the rights of property, or is *too little*, and therefore unconstitutional, because it violates the equal rights of the citizen.

The question of Constitutionality.

This I have touched upon, in general terms, under the preceding branch of the argument. Let us apply it more directly,—first, *to the Constitution and Laws of the United States.*

These are supreme, and must govern our State Legislatures in making,

and the Courts in enforcing laws. The sixth article of the Constitution of the United States declares that

"The members of the several State Legislatures, and all executive and judicial officers of the several States, shall be bound by oath or affirmation, to support this Constitution." And that "the Constitution, Laws, and Treaties, of the United States, shall be the supreme law of the land, and the Judges in the several States shall be *bound thereby.*"

These supreme laws authorize the importation into this State of alcohol, on the same terms, and with the same rights, that clothes, teas, or any article of lawful property and foreign commerce may be imported.

First then, there is no power in this State, to prohibit or prevent the landing of this article at our wharves, its entry at the Custom House, and its being stored in the warehouses of our citizens.

Second, it is admitted on all hands, that when the property is so introduced, and the right of introducing it has been paid for by the merchant, he has the right to *sell* it. The State has no power to impose on the importer a single restriction, or a cent of tax or excise, in any form, to interfere with his sale of the imported article to other citizens of the State. The same privilege which extends to an importer from a foreign country extends to an importer from another State.

But this law of 1838 assumes to deny this right to the importer. It walks right over the supreme laws and treaties of the United States, and declares "*no* person shall sell" — thus assuming to prohibit the importer from selling.

All agree that in this respect the law *is unconstitutional*, and cannot reach the importer. But it is admitted that the law may be unconstitutional in one provision and constitutional as to the rest.

We thus have the demonstration that in passing this Act of 1838, the Legislature *did* enact an *unconstitutional* provision, in one part of it, as to importers; and this may well diminish our confidence in the wisdom and integrity of the majority, in passing the rest of the law; for if under the *stimulus* of secret societies and combinations got up by bigoted men out doors, to *lobby* the Legislature into this enactment, the majority consented to violate the supreme law of the land in one particular, why may they not have done so in other respects?

What are the rights of the Importer?

The point then, is established, that the rights of the Importer, secured by the supreme law of the land, cannot be infringed by the laws of a State.

What are these rights? Why does the importer import and pay duties to the Government? Not to keep, use or store the article himself, but to *sell* it. The right to import then carries with it the right to *sell.*

What is the right to *sell?* It cannot exist in the seller without the right in others to *buy.* Any restriction on the right to *buy*, is a restriction on the right to *sell.* The buyer who buys for *consumption*, wishes to buy in quantities to meet his convenience and his demand for consumption. If he is compelled to buy more than he wants or can afford, he is obliged either to violate the law or go without, while his richer neighbor is fully supplied.

The buyer who buys to sell again, will only buy on condition that he can sell in quantities to meet customers generally; or in such quantities as a great proportion of consumers wish to buy. He then, must either violate the law, or must sell only to that particular class who have the means to buy more than they want at a time.

It follows conclusively, that this law, (if enforced,) would be a positive restriction on the importer. He imports to sell; but none will buy of him if they cannot sell again: consequently, to deny to the purchaser from the importer the right to sell, is a denial of sale to the importer himself.

Now, has the State law a right to deprive the importer of the market which he pays his duties to the United States for enjoying? Look at this fairly.

Heretofore, (ever since 1788, when the Constitution of the United States was agreed to,) the importer in this State could sell to all, in any quantity. All would buy because they could sell again, or consume in any quantity they chose. Now, under this law, (if enforced,) the importer can sell only to those who buy to sell again or to consume, in fifteen gallons at a time. The importer, (if the law is carried out,) would thus lose nine-tenths of his customers, and thus importation which is guarantied by the supreme laws of the land, would be *prohibited* nine-tenths by a law of the State.

If the State can cut off all the buyers under fifteen gallons, it can all under fifteen thousand gallons; because if the restriction of fifteen gallons is construed to apply only to internal State commerce, then the State is omnipotent in its power over that commerce, and can entirely prohibit traffic in the article between its citizens. If it can destroy the traffic between its citizens, it of course destroys importation, for it is imported only because it is trafficked in between citizens of the State.

Again; if the State can apply this prohibition to one article of commerce, (alcohol) it can to all articles of merchandise whenever a majority of the Legislature happen to believe that the use of any such article may be injurious to the citizens

What then becomes of *the power to regulate commerce*, which this State has solemnly ceded to the United States? Why do you go to Congress for tariffs, when you can make your own tariffs at pleasure, if this law be constitutional?

You want to build up home manufactures; you say it injures home industry to have foreign fabrics in our market. Just pass a law that no cotton, woollen, or silk goods, shall be sold in less quantities than fifteen pieces. Enforce such a law, and who will buy of the importer, or who will import? A State may, on this doctrine, usurp the whole power of Congress, and take back all it conceded in the Constitution.

What is the effect on Treaties?

The *public faith* is violated, if this law be established. The United States has made treaties with France, Great Britain and Holland, opening our markets to their brandy, rum, and gin, the same as to other articles of commerce. These markets are only in the States. Now this State law assumes the power to shut up those markets, and thus nullify these treaties. It says to these foreign traders, "you may send your merchandise to our wharves, but we will pass laws to prevent our citizens buying it?" What is this but in effect, assuming the whole control over foreign commerce, by shutting up the market, and thus violating the national faith pledged in treaties, by making those treaties of no effect?

What becomes of the *oath* of Legislators to *support* these treaties, if they can thus evade them? Every man who voted for the fifteen gallon law *knows* he did it to cut off the market for importation, and to prevent trafic in alcohol. This is the avowed object and aim of the law. He *knows* too, that under his oath, he has no power to do this *directly*, for that power is given to Congress. Will he pacify his conscience by doing *indirectly*, what he has sworn not to do *directly*? The end and aim of all

treaties of commerce, and all laws of importation are to secure a market. When the United States has done this in good faith, shall a State shut up the market by law, and annul all treaties and all laws regulating importation, by annulling *sale* between its citizens?

If this is not bad law, there is bad faith in such a proceeding, at which honest and high minded men should stop to consider gravely, how much of moral obligation they have got to violate, before they can enforce this law of pretended moral reform!

Effects of this law on the Revenue Laws of the United States.

The *intent* of this law is to prevent or diminish importation, and therefore it is a manifest violation of the 8th section, article 1 of the Constitution of the United States; of the concessions of the States to the power of Congress, to raise a revenue upon imports into the United States, and of the laws and treaties made by the United States.

The decisions of the United States Supreme Court, and of the Supreme Court of this State, bear out this view of the case. In Brown vs. Maryland, [12 Wheaten 439], the question was, whether the State of Maryland, could impose a tax on importers of clothes, rum, brandy, wines, &c. The Court decided it could not. Why? because it would concede to the States a power to annul their concessions to Congress in regulating commerce and raising a revenue.

Congress has the whole power to tax imposts and to raise revenue on commerce. Why was this conceded by the States? Clearly that the regulations might be uniform; that no one state should be able to shut up its market to any article of commerce, or to prohibit its importation by taxes, or by any obstructions that should prohibit its sale.

This is manifest, from the fact, that no goods are made dutiable unless imported with the intention, and for the purpose of *sale*. This is what the importer pays the United States Government for,—the right to sell. Having bought the right, shall he be deprived of it, directly or indirectly by *state legislation?*

The privilege of importing, and the privilege of *selling*, are indissolubly connected. The right to *sell* is a necessary incident to the right of *importing*. The grant of a privilege to import would be of no value unless it also conveys a right to *sell*. Deny to the importer the right to sell, and importation necessarily ceases.*

This doctrine is clearly sustained in the decision in Brown vs. Maryland. Chief Justice Marshall says:

"Why are the States restrained from imposing duties on imports or exports? Plainly because it was believed that the interest of all would be best promoted by placing that *whole* subject under the control of Congress. Whether the prohibition to "lay imposts or duties on imports or exports," proceeded from an apprehension that the power might be so exercised as to disturb that equality among the States, which was generally advantageous, or to confer the source of revenue on the Government of the Union, it is *plain* that the object would be as completely *defeated* by a power to tax the article in the hands of the importer, the instant it was landed, as by a power to tax it while entering the port. THERE IS NO DIFFERENCE, IN EFFECT, BETWEEN THE POWER TO PROHIBIT THE SALE OF AN ARTICLE AND THE POWER TO PROHIBIT ITS INTRODUCTION INTO THE COUNTRY. THE ONE WOULD BE A NECESSARY CONSEQUENCE OF THE OTHER. NONE WOULD BE IMPORTED IF NONE COULD BE SOLD."

I pray you to mark the reasons of this decision of the Supreme Court of the United States! It denies to a State the power to impose a tax upon importers or upon imported goods in their hands, which was the extent of the case before it. Why? Because this tax might be such as to defeat

*See Mr. Meredith's logical argument in Brown vs. Maryland.

that concession of the States which has given "*the source of revenue*" to the United States. And why would such a power in a State defeat the revenue power in the United States? Because of the fact that sale and importation are cause and effect. Take away the first, and the last ceases to exist. A power to prohibit the sale of an article is a power to prohibit its introduction. This last power no State has, and *therefore* it cannot have the power to prohibit sale. If, as the Supreme Court says, in Brown's case, it will not permit the power of Congress to raise a revenue, to be defeated by a power in a State to tax an article of import in the hands of the importer, the instant it is landed, will it permit that power to be defeated still more effectually, by a State law that prohibits the sale of the article after it goes out of the hands of the importer, and thus annihilates importation and revenue together?

The whole ground then, on which a State is denied the power to tax imports or importers, is, because it might raise that tax so as to render it impossible to sell at a profit, and thus destroy importation by destroying *sale*.

This is the whole reasoning in Brown *vs.* Maryland, and Judge Story re-affirms it in New-York *vs.* Milne, 11 Peters, 160; where he dissented from the rest of the Court. He says, that in Brown's case

"It was argued, that the act requiring a license (of the importer) did not reach the property until after its arrival in the State; that it did not obstruct the importation, but only the *sale of the goods after* importation; but *the Court* said, 'there is no difference in effect, between the power to prohibit the *sale* of an article, and the power to prohibit its *introduction* into the country. The one would be a necessary consequence of the other. *None would be imported if none could be sold.*'"*

Judge Story adds, (as his own opinion,) that "the result of the whole reasoning is, that whatever *restrains* or *prevents* the introduction or importation of *goods* into the country, authorised or allowed by Congress, whether in the shape of a tax or other charge, or whether before or *after* their arrival in port, interferes with the exclusive right of Congress to regulate commerce."

Chief Justice Marshall, in giving the opinion of the Court in Brown's case, also says:—

"It is obvious that the same power which imposes a light duty, can impose a very heavy one; one which amounts to *prohibition*. If it may be exercised at all, (by a State,) it must be exercised at the will of those in whose hands it is placed. *If* the tax may be levied in this form by a State, it may be levied to an extent which *will defeat the revenue by impost, so far as it is drawn from importation into the particular States.*"

Apply the whole of this reasoning against the prohibitory power of the States, to this law of 1838. What is the design of that law? To *restrain* importation by restraining sale. To *prevent* the introduction of alcohol into this State, though it is one of the essential articles of commerce on which the United States relies for revenue—to *defeat* the United States revenue, so far as it is drawn from importation of alcohol into this State!

Chief Justice Marshall says, if a State can impose a light duty on imposts, it can a heavy one, amounting to prohibition. Therefore it shall impose no duty whatever. For the same reason, if it can *prohibit* the sale of an article of import under a given quantity, however small, it can prohibit the sale of the article in any quantity, however large. If a State can prohibit the sale of an article (say Chief Justice Marshall and Judge Story,

* A most extraordinary perversion of this decision was made by one of the counsel in favor of the Law, before the Committee. He contended that it *conceded* the power to the States to prohibit sale, and by consequence importation, when it expressly denies such a power in a State.

with the whole Court,) it can prohibit its introduction into the country, and thus defeat the revenue by impost in that State.

If *one* State has the power, *all* have it; and all can shut up their markets to an article allowed to be imported by the laws of the United States. If this can be done as to *one* article, it can be done as to *all;* and thus the States have the power to destroy all revenue derived from importations.

[In 1838, the whole amount, in value, of all articles imported into the United States, was $113,717,404. Of this sum, $60,869,005 in value, were articles free of duty, leaving $52,857,399 in value, of articles imported on which duties were charged for purposes of revenue. The value of ardent spirits and wines imported in 1838, was $3,795,190; viz. 1,476,908 gallons of spirits, and 2,318,282 gallons of wine; which is 13, 92-100, being a fraction less than a fourteenth part of the whole revenue of the United States. So that if the States have the power, independent of Congress, to destroy importation of intoxicating liquors by prohibiting the sale in their territories, they have the power of abolishing a fourteenth part of the public revenue, thus leaving Congress at the mercy of the States, in providing the sources of public revenue to meet the public expenses. Can this be constitutional? Can such a power as this be consistent with the power over revenue ceded to the United States? Carry it out, for if it exists in little it exists unlimited. Massachusetts, for instance, may wish to prevent importation of alcohol, wine, tobacco, opium, and all sorts of stimulants to intoxication or luxury, on account of morals; and of all articles which she manufactures, on account of domestic industry. South Carolina may wish to prohibit the manufactures of Massachusetts on account of her objections to the Tariff. The Northern States may conclude to prohibit cotton, rice, and tobacco, because they are raised by slaves; and the Southern and Western States may wish to shut out all the fabrics, shoes, and products of the free States, unless they will put down Abolition Societies.]

If this fifteen gallon law be constitutional, where is the restraint? All these prohibitions of commerce between the states can be enforced by prohibiting the sale of the articles between citizens of the respective states, and thus the great purpose of the Constitution and the Union, revenue and uniform commerce, is at an end.

The only question that can be raised to evade the foregoing conclusions is, whether a State can do *indirectly* what the Constitution prohibits it from doing directly,—that is, whether, although it has not the power to prevent or restrain importation of an article, or destroy the revenue the United States derives from it, by prohibiting the sale from the importer to his purchaser, it can do the same thing by prohibiting the sale from that purchaser to any other buyer? If a state can do this, it can effectually destroy the importation of any article so prohibited, and deprive the government of the market for the sale of that article, from the sale of which alone is derived revenue, by inducing importation.

Certain it is, that if the states have this power, as a branch of the regulation of their internal commerce, they can, by state laws, prohibiting sale between their citizens and in their respective territories, nullify the importation laws, and cut off all sources of the public revenue. To say that the laws of the United States are not infringed by permitting the importer to sell, while the state law prohibits the citizens from buying the article of each other, is to affirm that the prohibition of the traffic between citizens does not interfere with or restrain importation, and does not diminish the revenue that would otherwise be derived from such importation.

Now, as it is obvious that the prohibition to sell between citizens must have this effect, and as that is its *avowed* object, and only possible benefit,

it must follow that a law of prohibition is directly repugnant to the exclusive power given to Congress to regulate importations into the states, and to raise a revenue from such importations by their sale in the markets of the states.

Distinction between the old and new law in this respect.

This makes a plain distinction between the former license laws of this state, which merely direct and regulate the *mode* of selling by citizens of the state, without restriction as to quantity, and the existing law, which positively prohibits the sale in less quantities than fifteen gallons; because such a prohibition cannot be enforced without diminishing importation and revenue, by diminishing consumption and sale in the market of the State.

This doctrine is fully admitted in the case of the Commonwealth *vs.* Kimball, decided by the Supreme Court of this State, under the former law of 1832. The Court says, that in the exercise of the powers reserved to the states, "they have the right and power to resort to all adequate and appropriate means, for carrying these powers into effect, *unless they shall happen, in any particular instance, to come directly in conflict with the operation of some law of the United States, made in pursuance of its enumerated powers.*"

The only question at issue in this case of Kimball, was whether the law of 1832, requiring a license for the retail of spirituous liquors, was repugnant to the laws of the United States, authorising the importation of the article, and raising a revenue thereon. The Court decided that "the power to *regulate* licensed houses, and to provide for the *regulation* of the *sale* of spirituous liquors, is an acknowledged power of the state government. It is not to be presumed that the Constitution was intended to inhibit or restrain the exercise of so useful and necessary a power, unless it shall so appear by plain words or necessary implication. The burden is upon those who would set up and enforce the restraint, to establish it by showing that the Constitution, by particular provisions, *or in the accomplishment of its general purposes*, necessarily interferes with it." And the Court adds, "that the objects to be accomplished by State regulation, are to be reached and effected by any appropriate means, which *do not interfere with the exercise of any of the powers vested in the General Government.*"

These powers are; to provide for the importation of any article of commerce into a State, and to raise a revenue from such importation. These are the "general purposes" of the Constitution in this particular; and they depend entirely upon the right to use the market of the State for the sale of the imported article.

The law of 1832 did not necessarily interfere with these powers or purposes, nor was it designed in its operation or effect, to diminish importation or revenue. It encouraged and promoted the traffic between citizens.

But the law of 1838 does nothing but *prohibit and discourage sale.* It regulates nothing, for its whole jurisdiction is confined to less than fifteen gallons, and the sale of this it directly inhibits. If carried into effect it must diminish importation directly, by abolishing demand and supply. It is palpable therefore, that the power of Congress to raise a public revenue from this source, is to be materially affected by the intended operation of this law, should it be enforced.

"I cannot admit, (says Judge Story, in the case of New York *vs.* Milne) that the States have authority to enact laws which *trench* upon the authority of Congress in its power to regulate commerce."—It is no answer to say that the States will have too much wisdom and prudence to exercise the authority to an injurious extent. Laws were actually passed by New York, New Jersey, and Connecticut, during the Steam Boat controversy, which threatened the safety and security of the Union, and demon-

strate the necessity that the power to regulate commerce among the States, should be exclusively in the Union, in order to prevent the most injurious restraints upon it."*

Must it not be conceded, then, either that this law does infringe upon the importation and revenue laws of Congress, or that the public revenue of the Union is entirely at the mercy of the States, which may annihilate it whenever they choose to cut off importation by prohibiting sale between their citizens and in their respective territories?

Such are the views I take of the repugnance of this law to the Constitution, treaties, and laws of the United States. I must say, that I regard them as deserving much graver considerations than they seem to have received in this excited controversy.

This Law violates the State Constitution.

A state law may be constitutional as respects the United States Constitution, and yet be a violation of the Constitution of the State, which is the supreme law in the Commonweaith, that legislators, judges, jurors, and citizens, are bound to obey in preference to any enactment by the General Court.

The fundamental principles of the State Constitution which this law violates, are,

1st., the unalienable right of acquiring and possessing property. Art. 1.

2d. The right each individual of the Society has to be protected by it in the *enjoyment* of property according to *standing laws*. Art. 10. The guarantie that no *part* of the property of an individual can be justly taken from him without compensation.

3d. The covenant of the social compact, "that all shall be governed by *certain laws* for the *common good*;" and "the duty of the people in framing a Constitution, is to provide for an *equitable* mode of making laws." Preamble.

4th. A frequent recurrence to the fundamental principles of the Constitution, and a constant adherence to those of *justice*.. Art. 18.

5th. That no association of men have any title to obtain exclusive advantages distinct from those of the community than what arises from services rendered to the public. That government is instituted for the common good, and not for the profit or private interest of any class of men. [This last objection applies to the employment of Physicians as an exclusive class or profession, who are to have the profit of the trafic taken from the retailer and transferred to them.]

Effect on property rights, as to acquisition.

We have seen that alcohol is property, under the supreme laws of the land, (the acts of Congress and the United States Constitution,) as much as tea, coffee, clothes, or any article of merchandize.

There is no power in the State to prevent its being mixed up and incorporated with all other property a citizen has a right to acquire. This is the condition of the cession made to Congress by all the States.

It being property subject to acquisition, and beyond the prohibition of State laws, the State cannot pass a law that one class of men may acquire and possess it, and another class shall not. The State may regulate the *means* of acquiring property, but it must leave every citizen free to acquire it in greater or less quantities, according to his means.

*This refers to the leading case of Gibbons *vs.* Ogden & Wheaten, which overthrew the Steam Boat monopoly in New York. Those who cite the private opinion of Chancellor Kent in favor of the United States Constitutionality of the fifteen gallon law, would do well to remember that Mr. Kent also gave his opinion in favor of the Steam Boat monopoly, but was overruled by the Supreme Court.

But this law says that those who can acquire fifteen gallons or fifteen dollars worth of this property, at one time, may do it; while it says that those who cannot acquire that amount, shall *not* acquire any, unless through a violation of law.

Where is the difference between this and a law which should prohibit a citizen from acquiring less than fifteen dollars worth of food or clothing at one time? Would such a law be just and equal?

Effects as to enjoyment of Property.

Property is also to be *enjoyed* according to *standing laws*. These laws make no distinction as to any class of men enjoying a large amount of property, while another class who have little, are not to be allowed to enjoy that little.

Standing laws for two hundred years have protected the enjoyment of this property in any quantity men chose to possess it. Until now it could always be bought and sold, in any quantity, for any use. There can be no legal enjoyment of property without the right to buy and sell. But this right is taken away from a certain quantity of this property, such as the man of moderate means can acquire, and yet the larger quantity of the same property, which the rich can acquire, is left as free to his enjoyment as is all other property under standing laws. This is as open and manifest a violation of the Constitution as it would be to prevent a farmer from selling over one bushel of rye at a time, under pretence of stopping distillation.

The Constitution declares that no *part* of property shall be taken away from any individual, without compensation. This law confiscates one seventh part of the property in this article, by declaring that the part under fifteen shall not be sold, acquired, or enjoyed; and it deprives all who cannot obtain over a seventh part, from lawfully obtaining *any!* Where is the difference between this and a law depriving men of acquiring less than the seventh part of a dollar, or of one hundred dollars,—or of one hundred acres of land? Of what avail are *standing* laws in regard to property, if the Legislature can, at will, make such restrictions as this to limit its use, acquisition and enjoyment? And as all property comes under the same standing laws, where is the power given in the Constitution to single out *this* property from others; and proscribe it, or any part of it?

The Legislature is only an *agent*, with the Constitution for its power of Attorney, to act for the people. If it cannot show the express or fairly implied grant of this power, the exercise of it is open usurpation. Where is such a power given or implied in the Constitution?

Effects on Equality of Laws and Rights.

Again:—The whole object and design of the Constitution was to insure the making of *equitable laws*, and a constant adherence to the principles of *justice* is enjoined.

The object of this law is to make it very difficult, if not impossible, for men of small means to get ardent spirits lawfully. It thus divides society horizontally, according to property or credit, and denies the first broad principle of equitable laws, that *every man shall have his money's worth.* Why should your fifteen dollars be able lawfully to buy fifteen measures of property, while my dollar cannot lawfully buy *one*, although the seller is as ready to sell one to me as fifteen to you? No sophistry can make this a just or equitable provision in any law, and no other law in existence has any such provision in it.

The broadest and largest principle in property rights, which covers every thing in our institutions is this—that every man, high or low, rich or poor, shall have the *equal right to acquire, possess and enjoy his money's worth of all lawful property that is susceptible of divisibility, to the minimum extent the seller chooses to divide it.*

This principle the act of 1838 directly violates, while no other act in the statute book infringes it. Surely then, this is a new and dangerous principle in legislation.

When such is the design and effect of a law, got up under great professions of philanthropy, it is wise for the people and for their Legislature to ponder well the maxim of Washington, in his Farewell Address:—

"Resist with care the spirit of innovation upon the principles of your government, however specious the pretexts."

This principle may be traced back to the earliest foundation of government in this State. Governor Winthrop's definition of true liberty, was this, in 1660:—

"Civil, moral, and federal liberty, consists in every man *enjoying* his *property*, and having the *equal* benefit of the laws of his country."

Does the man whose limited means prevent his buying fifteen gallons at a time, without great inconvenience, or who does not want to use so much in a year, have the equal benefit of this law with the man of large means, who can buy that quantity without inconvenience?

To this equal enjoyment according to means, in every individual, and this equal benefit of laws, whether of prohibition or privilege, the Act of 1838 is utterly repugnant.

If then the Bill of Rights be any thing but a rhetorical flourish, this act is palpably a violation of the Constitution, and can never be regarded by the citizens as a law of the land.

The question of Expediency and Enforcement.

We now come to the matter of expediency, and the practical enforcement of this act. All the argument tends to this point.

The act was not necessary to keep society together. There was no palpable outrage on society demanding it, and it was no certain remedy for the evils of intemperance. It is therefore inexpedient unless the public mind is so fully prepared for it, as to readily settle down into a general acquiescence. Every doubt that attaches to its expediency, constitutionality or fairness, will operate directly against its enforcement; and if not enforced, it will be worse than no law on the subject.

It is inexpedient, because it presses a moral cause beyond the rule of good government. That rule is well laid down to consist in this:

"To find the *maximum* of voluntary influence and the *minimum* of legal coercion,—and to do nothing by law that can be done by opinion, or custom, or morals, or religion."

All that goes beyond this in attempting to enforce moral restraints, constitutes a *force law*, and this is what we mean by calling this act a *force law*.

It is inexpedient, because, before it was passed, there was a general acquiescence in the temperance reform, and even in the laws, (objectionable as some of them were,) passed to aid that reform; but this act will embody resistance by extreme pressure, and drive men to an investigation of the principles of these laws of restraint upon lawful opinions and appetites, which may endanger the whole, and carry you back far beyond the point you started from.

A law that cannot be enforced will amount to universal license. The common sense of common justice will revolt at such a law, and juries will not, perhaps, be found to agree upon verdicts under it. The constitu

tionality of this law will be argued to them, and they have the right to determine the law as well as the fact, in each case.

Laws all depend on public opinion; especially so when designed to enforce a moral reform. Public opinion, which was doing all that could be hoped for, in this reform, will react under the pressure of this law of prohibition; to what extent remains to be seen, but inevitably to the extent of rendering this law nugatory.

Public opinion will sustain all proper and necessary restraints of wholesome regulation, applied to places and occupations, and not to property and classes. But it will resist prohibition, and in that struggle it may break down the whole barrier which custom and moral influence have raised against habits of dangerous indulgence. For these consequences those who shall press this bad law, if they retain it, will be morally responsible.

The law is inexpedient, because it was not called for by the necessities of the temperance reform. It is the *few* who want excitement, and who cannot wait for the good seed sown to spring up and bear fruit—it is *they*, and not the cause, that have demanded this experiment, and therefore it must fail.

The only proper use of penal laws is to apply punishment and sometimes prevention, to overt acts, wrong in themselves. This law is designed to prohibit the temperate use in *all* of the comparatively poorer classes, because *some* may use it intemperately. It cannot hold good in law or morals that all men shall be denied a right, because some may use it wrongfully. It is lawful to drink. Shall all men be denied this right because some may drink too much? Why cut off my hand, because my neighbor may imbrue his hand in blood?

It is in the nature of a law against *freedom of opinion*,—for what is total abstinence but the result of opinion? Good citizens differ as to the necessity of total abstinence. It is therefore a conflict of creeds, and systems of living. Your law comes in, in aid of one creed and one system against the other. What is this but a revival of the old doctrine of wholesome persecution, to convert men to particular creeds and notions by force of penal laws, after argument and moral suasion have failed?

It is a violation of the original Temperance Constitution and pledge.

Those who began the Temperance reform repudiated all resort to force laws. Such were the terms of the original enlistment in this good cause, and the attempt to pervert it to purposes of legal persecution, is a departure from the original Constitution, and absolves from further union or coöperation with Temperance Societies, all who do not mean to become persecutors, and who disclaim invoking the strong arm of the law to punish men for not thinking as they do.

The Constitution of the American Temperance Society, which first promulgated the great moral remedy of total abstinence, and which remains unchanged to this day, utterly repudiates all force laws. This will be seen by an examination of the articles of association. The preamble says:

"Whereas the various measures which the friends of Christian morality have adopted, though not altogether unsuccessful, have been found quite insufficient to give any effectual and permanent check to this desolating evil; and whereas some more *vigorous means* are evidently required,—therefore the friends of domestic and social happiness, wishing to do all in their power to promote the welfare of their fellow men, resolve to form a Society" &c.

And what were these "more vigorous means"? Not pains and penalties, but, (says the preamble,)

"Some system of *instruction* and action which will make a *steady* and powerful

impression on the present and following generations, and *in this way*, ultimately effect *a change of public sentiment and practice* in regard to the USE of intoxicating liquor, and *thus* put an end to that wide spreading intemperance, which has already caused such desolation in every part of our country."

Not an allusion to force laws, fines or imprisonment. It was to be a system of *instruction*, not of prosecution ;—a change was to be made in public sentiment by appeals to understanding and feeling,—not by pimps, spies, and informers!

A change was to be made in regard to the voluntary USE, not whips and scorpions, fines and bolts, fire and fagot to be applied to the *dealer* in the article. His customers were to be taken from him by moral suasion and the change in fashion and habit, not by *indictment;* for when public sentiment abolished the *use*, the sale, which was the *consequence*, not the *cause* of the use, would disappear with it!

The only qualification of membership, was to abstain from the *use* of intoxicating liquor, and the following are all the duties enjoined in the 8th article, upon the officers and agents of this society, in carrying forward the work, viz. ;

"To make appropriate communications, by pamphlets, correspondence, and personal interviews, to ministers of the gospel, to physicians, and others, and to consult and co-operate with them for the purpose of guarding those under their influence against the evils of intemperance ; to take pains, in all proper methods, to make a seasonable and salutary impression, in relation to this subject, on those who are favored with a public and refined education, and are destined in various ways to have a leading influence in society ; to make it a serious object to introduce into the publications of the day, essays and addresses on the subject of intoxicating liquor, and to induce teachers. and those concerned in the support of schools, to labor diligently to impress the minds of the young with the alarming and dreadful evils to which all are exposed who indulge themselves in the use of strong drink ; to make affectionate and earnest addresses to Christian churches, to parents and guardians, to children, apprentices, and servants, and all other descriptions of persons, and to set clearly before them the effect of spirituous liquor on health, on reputation, and on all the temporal and eternal interests of men, and to urge them, by the most weighty arguments, drawn from the present and the future world, to keep themselves at a distance from this insidious and destructive foe ; to do whatever is practicable and expedient towards the forming of voluntary associations for the purpose of promoting the ends of this Society ; and, in general, to labor, by all suitable means, and in *reliance upon the divine blessing*, to fix the eyes of persons of both sexes, and of all ages and conditions, on the magnitude of the evil which this Society aims to prevent, and on the immeasurable good which it aims to secure ; and to produce such *a change of public sentiment*, and such a renovation of the habits of individuals, and the customs of the community, that, in the end, *temperance, with all its attendant blessings, may universally prevail.*"

Here "*the divine blessing*," and not "the strong arm of the law," is invoked, as the sole reliance in promoting the cause.

This was the original purpose and pledge of the Temperance reform ; and Mr. Chairman, as one of its earliest adherents and disciples, literally a pioneer in the work, and holding as I still do, the relation of membership to some five Temperance Associations, of two of which I drew the Constitutions and made the firstreports in 1827 ; I here charge the movers of this *law temperance*, which is now to be enforced by pains and penalties, with *a gross departure from the original principles of the institution.*

I hold them as guilty, (in a moral point of view,) of perverting the true faith of temperance, and becoming persecutors, as were the bigots in religion, who changed the mild influences and the long suffering of early Christianity, into the rack, the gibbet, and the fagot.

With such persecuting and furiously proselyting temperance, I disclaim all association, as I would with such religion. It has taken the sword, and it will perish by the sword.

Thus do we find this obnoxious law, not only violating the Constitutions of the United States and the State, but the Temperance Constitution itself. And, are free men or temperance men, to be called on to support such a law?

This law, and the means taken to enforce it, are a perversion of the original temperance reform, in another important respect. The design never was to reach the drunkard or the tippler. The constitution of the society says:

"It is to be adopted as a *principle*, that while we are to make use, perseveringly, of all fit and promising means for the reformation of those who have already, in different degrees, contracted habits of intemperance,—the utility of the institution must *chiefly* consist in guarding against danger, those who are yet uncontaminated by this loathsome and fatal vice."

But what say those who press this law upon us? Why, that they are wearied in well doing; that they have convinced all who they think are fit to be reasoned with, and that a class of men are left who are too obstinate to be convinced, and they must have law to put them down and send them to prison.

This law, then, is designed expressly to persecute and punish the incorrigible, or those who will not be convinced; and therefore it is a direct violation of the mild doctrines upon which the temperance reform, like pure Christianity, was placed by its founders, e'er charity and meekness had been changed to ferocity and despotism by the ambition of a few ruthless leaders, and the lust of party power.

No liberal man who started in the original temperance reform, before it became degraded into a persecuting, political party, can fail to perceive the great change in all the movements of Temperance Societies. This change has morally absolved him from an association with persecutors and proscribers. He cannot go into their meetings now, as he once did, and hear temperance discussed. It is all law and the lash. Moral and social influences are almost scouted there, as mean and spiritless, and the cry is, "give us the law, give us the power, down with our opponents; murderers, thieves, robbers! crucify them, crucify them!!"

Instead of going into the social circle to protect from the habit by moral influence, those who have not fully acquired it, this law assumes to operate on those whose appetites cannot be restrained without enforcement of penal enactments. It aims at those of supposed fixed habits; it leaves the highest and richest, who are generally supposed to set the fashions, to indulge freely in their choice wines and their fifteen gallons of strong proof; while it attempts to hedge round the poor man, and to

cut him off from his little indulgence, because he has not the means to buy larger and drink deeper. Can such a law commend itself to the common understanding and the common conscience, as a law which those who exempt themselves from it, really passed for the common good?

Temperance has been injured by force Laws.

The cause succeeded better on its original moral basis, than it has since done by attempting to bring in the aid of force laws, contrary to its own constitution. Moral influences began to operate generally in 1828—29.

Force laws began to be applied and felt in 1832—33. Contrast the two periods of five years each, under moral and legal appliances.

TABLE No. 1.

Schedule of Imports and Exports of Foreign Ardent Spirits in the United States, from 1829 *to* 1833, *inclusive.**

Years.	Imported.	Exported.	Home Consumption.
1829	3,423,000	735, 00	2,688,000
1830	1,692,000	706,000	986,000
1831	2,491,000	639,000	1,852,000
1832	2,810,000	662,000	2,148,000
1833	2,954,000	728,0 0	2,226,000
Total 5 years,	13,370,000	3,470,000	9,900,000

Imports and Exports of the United States from 1834 *to* 1839.

Years.	Imported.	Exported	Home Consumption.
1834	2,511,000	511 000	2,0 0,000
1835	3,394,000	310,000	3,084,000
1836	3,524, 00	272,000	3,252,000
1837	2,672,000	299,000	2,373,000
1838	3,092,000	232,000	2,860,000
Total 5 years,	15,193,000	1,624,000	13,569,000
	13,370,000	3,470,0 0	9,900,000
Increase of the last 5 years.	1,823,000	1,846,000 Decrease of Exports.	3,669,000

* This statement is made, not from the Temperance tracts, but from returns certified by the Treasury Department at Washington, and politely transmitted to Mr. H. by the Secretary of that Department. The hundreds are omitted as unimportant, and to avoid unnecessary figures.

It appears, from this comparison, that the average consumption of foreign spirituous liquors in each year, for five years, from 1829 to 1833, when moral suasion and "the divine blessing" were relied on, was 1,980,000 gallons.

For the five subsequent years, when the effects began to be felt of calling in "the strong arm of the law," the average consumption of each year has been 2,713,800 gallons; shewing an average increase in each year during the last five, of 833,800 gallons.

The *decrease* under moral suasion, between 1829 and 1833, was 442,000 gallons. The *increase* between 1834 and 1838, under force laws, is 860,000 gallons. Net difference *against* the latter period, 1,276,000 gallons.

The average annual *decrease* from 1829 to 1833, was 92,000 gallons. The average annual *increase* from 1833 to 1839, has been 172,000 gallons. Difference *against* the latter period annually, 264,000 gallons.

Imports into Boston.

This unfavorable result for the cause of temperance is shewn still more decisively in the State of Massachusetts, where law Temperance was first started in 1831—2, and has been pushed farther than in all the other States in the Union.

TABLE No. 2.

Importations of Spirits and Wines into Boston, and Exports of Spirits (foreign) from 1829 *inclusive, to* 1839, (10 *years.*)

Year	Brandy	Rum	Gin	Total Spirits	Exported Foreign	Home Cons'mp tion	Wine Import'd	Total Wines & Spirits	Do- mestic Exp'd
1829	85,750	319,550	92 400	497,940	181,964	315,980	4 6,600	954,440	
1830	21,100	265,810	78,160	364, 70	118,829	245,241	2 0,680	644,750	4,503
1831	60,600	348,820	104,510	508,930	150,626	358,304	511,300	1,020,290	26,035
1832	91,840	222,810	165,166	480,110	186,151	293.959	887,850	1,367,960	2 ,545
1833	1 9,030	135,090	127, 70	391,790	173,304	218,486	620,840	1 012,630	47,530
1834	8,550	117,600	73,810	279,960	98,65	181,304	557,790	837,750	230,948
1835	124,730	156,420	120,850	401,7 0	35,712	365,988	489,650	89 ,350	234,911
1836	156,420	190,180	177,350	523,950	41,696	482,254	737,94	1,261,899	11,169
1837	7 ,360	8 ,3 0	116,460	278,14	22,452	255,688	397,000	675.140	64,814
1838	98,650	133,27	2 5,4 0	437,32	16, 44	421,276	374 80	811,100	105,169

Taking Five Years, from 1829 *inclusive to* 1834.

Frm 1829 to '34	Brandy	Rum	Gin	Total Spirits	Exported Foreign	Home Cons'mp tion	Wine Import'd	Total Wines & Spirits	Do- mestic Exp'td
Frm 1834 to '39	388,330	1,292 920	567,600	2,242,849	810,874	1,431,979	2,767 230	5,000 070	325,058
Tot'l	510,710	686,79	693,870	1,921,070	14,550	1 706,51	2 556,460	4 477,53	426,143

Increase of Brandy,	121,39	Decrease of Wines Imported	210,770	Spirits. Average *Consumption* the first 5 yrs. to 1834,	286,394
Decrease of Rum,	605,13	Decrease of Wines and Spirits Imported	522,549		
Increase of Gin,	126,270	Deducting fm. decrease of Exports,	596,314	Average Consump. per year the last 5 years, to 1839,	311,302
Decrease of Spirits,	321,770				
Decrease of Exports,	596,314				
Increase Consumption,	274,540				
Increase of Domestic *Exported,*	101,085	Leaves increased Consumption of Wines and Ardent Spirits,	73,774 gallons.	Difference in the average of the two periods.	54,908

Wine average the first 5 years, per year,	573,446
do. do. second 5 years,	511,292
Average *Consumption* of Spirits the last 3 years,	386,406 gallons.
Average Consumption the seven preceding years,	282,752 "
Showing in favor of 7 former years, each year,	103,654 gallons.
Average Consumption of two last years,	338,482 "
Still showing a greater average than 8 preceding years, by	30,790 gallons.
Increased Importation of Spirits into Boston in 1838 over 1837,	159,189
Diminished Import of Wines during same time,	22,920
Increase of Importation of Spirits in 1838, over the average of 1836, '37, and '38,	4 3,137
Import of 1838,	437,320
Difference in 1838,	24,183 gallons.
Increased *Consumption* of 1838, over the average Consumption of 1836, '37, and '38,	34,870 do.
Increased *Consumption* of Spirits in 1838 over 1837,	165,588 do.

Boston furnishes rather less than one twenty-eighth part of the whole revenue of the United States, and yet in 1838 *one-third* of the increased imports of spirits in the whole Union, was made at the port of Boston!

A startling fact this, that where the laws have been severest, importation has been largest.

TABLE No. 3.

Comparison of Imports and Exports of Spirits in Boston between two periods of five years,—from 1829 to 1834, and from 1834 to 1839.

Five years,—from 1829 to 1834.

Imported.	Exported.	Consumption.	Domestic Spirits exported from 1831 to 1835.
2,242,840	810,874	1,431,970	235,958

Five years,—from 1834 to 1839.

Imported.	Exported.	Consumption.	Domestic Spirits exported from 1835 to 1839.
1,921,970	214,569	1,706,510	426,143

Showing increased Consumption the last 5 years,		274,540 gallons.
Increased Export of Domestic Spirits the last 4 years, in two periods of 8 years,		101, 85 do.
Average Consumption of Foreign Spirits for the first period of five years, per year,	286,394	do
Average Consumption of the last five years,	341,302	do.
Increased Average,	54,908	
Average Consumption the last three years,	386,466	
Average of the seven preceding years,	282,752	
In favor of the 7 first years,	103,654	
Average Consumption of two last years,	338,482	
Average of the eight preceding years,	307,690	
Increased average of the two last years,	30,792	
Increased Consumption of 1838 over 1837,		165,588 galls.

The whole increase of 1838, in the United States, is 497,000 galls., *one third* of which is in Boston, alone!

Another singular fact in these statistics is, that while the consumption of alcohol in the form of rum, brandy, and gin, has increased, its use in the form of *wine*, has diminished. The wines consumed in the United States, in 1837, were 5,992,000 gallons. In 1838, 4,047,000 gallons. Decrease, 1,945,000 gallons.

The wines imported into Boston in 1837, were 397,000 gallons. In 1838, 374,000 gallons. Less, 23,000 gallons.

And yet all the force laws have been applied exclusively to ardent spirits, which have increased under them, while *wine*, that has been left without restraint, has diminished, under moral suasion. Had the restraints been applied to wine and not to spirits, the reverse would unquestionably have appeared. Such are the laws of human nature.

Increased Sales in Boston.

We are prepared to shew further, the unfavorable influence of force laws upon Temperance, by the increased sales from Distillers and large dealers, since this law was first agitated. We shall offer direct proof of this fact, and shall also shew that the sales have been very large, and equal to, if not greater, than in former years, by the dealers in Boston, for consumption and

sale in the counties where for three or four years past the Commissioners have withheld all licenses. The fact of the increased sale under prohibition, is well understood by the large dealers in this merchandize, and can be demonstrated by an examination of their books.

In the midst of the senseless and unchristian vituperation cast upon this portion of our fellow citizens, by the temperance persecutors of better men than themselves, it is but just to recur to this evidence of their fairness and their disposition to do right. It will be understood better hereafter, should this law not be repealed.

But let it now be stated and remembered, that so far as profit is concerned, the dealers are directly interested in keeping up this law. It will put money into their pockets. It will increase the consumption, increase the demand, increase the sale, and increase the profit. It has had this effect already, and will continue to have this effect with increasing force, the longer it is persisted in. I respect these citizens for the evidence they thus give of a desire to reform the law, though it will be at a loss of profit, rather than avail themselves as they might, of a bad law, to increase their profits.

The immoral tendency of the Law.

This brings us to consider the influence of such a law on morals and the public justice. It will be evaded in all possible forms, where it cannot be openly disregarded. It gives a free license to wine shops, which are now restrained, and under the name of wine, all things can be sold.

"Tell me where wine ends and brandy begins," was the shrewd remark of a dealer who was asked what he should do if this law was not repealed.

It will induce malicious prosecutions on one side, revenge and violence on the other, and perjury in your Courts on both. It will engender bigotry in the prosecutions, and hypocrisy in those who will indulge their appetites secretly, while openly pretending to go for the law.

It has excited, and will continue to excite, angry feelings and bitter collisions, destructive of good neighborhood and the social affections. Your criminal Courts will be filled, not only with prosecutions for violations of this Act, but for the breaches of peace, slanders, libels, and personal assaults, that will grow out of the vain attempts to enforce it. In a word, instead of a law of prohibition, or of regulation even, it will become in effect, a law of universal license.

The Expense of Enforcing such a Law.

Has the cost been counted? There will be great resistance to so unreasonable a law, and the costs of criminal prosecutions of all kinds, growing out of it, will greatly enhance the public expenses in the administration of justice, which already costs $81,000 annually, in this Commonwealth.

Who will pay this additional expense? Will the getters up and supporters of this law? At present it must fall upon the State, already obliged to borrow to meet the excess of her current expenses, over the annual income.* The Governor, in his annual Address, alludes to the increase of County balances, as among the causes of increased expendi-

* To escape from this unpopular effect of the law, the Legislature subsequently threw the County balances upon the Counties, and took the fines for the General Treasury. But who pays? Is it any saving to pay a State tax by calling it a County tax? Will a citizen of Boston, for instance, find it cheaper to pay County balances as a Suffolk man, than he would as a Massachusetts man?

tures. In 1832, these balances were $28,626. In 1838, they were $68,680, showing an increase of $40,000.* Much of this grows out of prosecutions under force temperance laws. The increased expenses between 1836 and 1838, have been larger in the prohibitory than in the licensing Counties.

The angry feelings this law engenders.

These are to be taken into the account where a new and unheard of law is made, under the pretence of improving the moral condition of the people, and promoting the social affections.

This law will not only prove to be the mother of hypocrisy in those who enforce and those who evade it, but it will engender angry and vindictive feelings. It singles out for proscription and punishment, a respectable class of citizens, whose business has been sanctioned by the laws for two hundred years.

Assertions like these are made in reference to such men, by one of your honorable Senators, who voted for this law.*

"They ought to be charged in account annually, for one half the pauperism, one half the insanity, one half the conflagrations, one half the suicides, thefts, murders, and rapes of society."

Epithets like the following are heaped upon these citizens by the newspaper organ of the supporters of this law, which daily grossly and openly violates the law of libel, (if there be such a law,) while exclaiming with horror against other violators of law!

[Epithets from the Mercantile Journal.]

"Whig liquor dealers, whose inclination to deal in rum is more than a match for their patriotism; petty, little faction; dictators of the party; playing a deep game; preconcert, manœuvering, and fraud; selfish and private ends; secresy of some eastern despotism; tainted with fraud, treachery, usurpation, proscription, and favoritism; proscriptionists; RUM WHIGS, AND RUM-SELLERS; STRIPED PIG LIQUOR DEALERS!"

Harsh epithets have led to harsh laws. This law was preceded by a systematic attempt to create a new moral offence in society. Professedly christian men publicly branded their fellow citizens who were as free from crime or evil intent as themselves, with robbery and murder.

I deprecate in Christian ministers, whose moral influence would else be as salutary in this cause as their learning is eminent, remarks like these, calculated to stir up worse passions than intemperance itself engenders.—

"I challenge any man, who understands the nature of ardent spirits, and yet continues to be engaged in the traffic, to show that he is not involved in the guilt of murder."—LYMAN BEECHER.

"No man can act on Christian principles, or do a patriot's duty to his country, and make or sell the instruments of intoxication."—HENRY WARE.

"The evils of intemperance can never cease until the virtuous in society shall unite in pronouncing the man who attempts to accumulate wealth by dealing out poison and death to his neighbor, as infamous."—JOHN PIERPONT.*

In contrast with these unchristian denunciations, I love to hear opinions

* Hon. S. G. Goodrich, of Norfolk.

* And yet, strangely inconsistent as it must seem, these estimable and reverend gentlemen have been for years, and still are, supported in their parishes, to a very considerable extent, by the men they pronounce traitors, murderers, and infamous! Are they not, by their own showing, content to receive from these men the price of blood?

like this, from wise and eminent men in the land. It will do more good than volumes of abuse, or a whole code of force laws:—

"Being satisfied from observation and experience, as well as from medical testimony, that ardent spirit, as a drink, is not only needless, but hurtful; and that the entire disuse of it would tend to promote the health, the virtue, and happiness of the community, we hereby express our conviction, that would the citizens of the United States, and especially all *young men*, discontinue the use of it, they would not only promote their own personal benefit, but the good of their country and the world.

Signed, JAMES MADISON,
ANDREW JACKSON,
JOHN QUINCY ADAMS."

Does public opinion demand this Law?

This is not a mere question of majorities. To make such a change as this in legislation, affecting voluntary morals, and not the immediate exigencies of society, the demand of public opinion should be open, manifest, unquestionable, and to a degree, unanimous. The sudden passage of this law in 1838, was a surprise upon the public. It was the result of external pressure upon the Legislature, by self constituted societies, and of an ex-parte hearing before an ex-parte committee. No law ever raised a more decided opposition, from the moment of its passage. It has kept the community in a broil ever since. What has been the popular expression as indicated by the return of members this year? (1839.)

Elections of *twenty-three* Senators by the people have been prevented, solely by opposition to this law, in six out of fourteen counties, namely, Suffolk, Worcester, Middlesex, Norfolk, Hampden, and Franklin, leaving but seventeen chosen by the people.

In the Senate of 1838, twenty-four Senators voted for the law, and nine against it. Of the twenty-four who voted for the law, nineteen were candidates for re-election. Ten were chosen, and *nine* were defeated.

Of the nine Senators who voted against the law, five were candidates; three were chosen, and two defeated.

The popular vote, as far as it can be estimated, from the known opinions of the candidates, without regard to party, gave the following results:—

In *Suffolk*, the majority against the law was 5099. In *Worcester*, the opponents of the law threw an average of 638 more votes than its friends. In *Franklin*, the majority over the candidate who would not declare against the law, was 643. Here is a majority of 8049 in three counties, which all the other counties cannot balance on the other side.

In *Hampden*, the candidates supported on open ground of opposition to the law, combining both parties, had 3805 votes, to 2616 for advocates of the law. Difference 1189. Mr. Boise, who voted for the law, was in a minority of 416. Mr. Ives, who opposed the law, in a minority of 204. An entire liberal ticket prevented an election.

In *Norfolk*, three candidates who had voted for the law, were defeated. The two candidates having the highest votes, were against the law. The scattering for the liberal ticket would have elected them.

In *Bristol*, one who voted for the law was beaten. Those chosen were not supporters of the law, and one, (Mr. Whitmarsh) had published his opposition to it, and his determination to vote against it, if elected.

In *Middlesex*, one who had voted for the law was elected. One for it, and one against it, rejected. Of the three having the highest vote, two were against the law and one for it.

Hampshire was equally divided, one for the law and one against it. But Mr. Clark, who had voted against the law, had 275 more votes on the same ticket, than Mr. Lawrence, a champion of the law, and President of the Senate.

Berkshire, Essex, Plymouth, Barnstable, and Nantucket, re-elected supporters of the law.

The popular will, as shown in the canvass for Senators, gave the preference to candidates divided on this question, as follows:—

	Against the Law.	*For the Law.*
Suffolk,	6	0
Middlesex,	3	2
Worcester,	6	0
Essex,	0	6
Hampshire,	1	1
Franklin,	1	
Hampden,	2	
Berkshire,		2
Norfolk,	2	1
Plymouth,		2
Bristol,	2	1
Barnstable,		1
Nantucket,		1
	23	17

In the House, but a very small portion of those who voted for the law were sustained by the people in 1839;—not one in three, as is seen by the following table.

Number of members in the several Counties, who voted on the Law of 1838, *and were re-elected in* 1839.

	Yeas in 1838.	Re-elected in 1839.	Nays in 1838.	Re-elected in 1839.
Suffolk,	16	3	23	5
Essex,	36	17	7	3
Middlesex,	30	4	18	9
Worcester,	30	4	22	11
Hampshire	15	6	2	1
Hampden,	8	0	6	0
Franklin,	8	2	8	5
Berkshire,	5	1	5	1
Norfolk,	19	10	7	4
Bristol,	19	8	3	1
Plymouth,	30	10	0	0
Barnstable,	18	10	0	0
Dukes & Nantucket,	5	2	0	0
	229	77	106	39

This unusual change in the members has taken place, so that although the great object of the supporters of the law was to prevent its repeal in 1839, they have nevertheless returned but *seventy-seven* of the original advocates of the law; thus clearly indicating that the unpopularity of that measure has obliged the friends of the law to take new candidates, who were not known to be pledged to uphold the law.

Neither was there a full expression of the representatives in passing the law at the close of the session of 1838. It was in fact passed by a *minority* of the House, and was almost the last Act of the session. The whole number of members belonging to the House, in 1838, was 478, requiring 240 for a majority. But 229 voted *for* the law, which is *eleven* less than a majority. It was therefore passed *by a minority* of the House!

Of the whole number of members in the respective Counties, there were wanting majorities for the law, viz.—in Suffolk, 25 less than a majority; Worcester, 9; Hampden, 8; Franklin, 4; Berkshire, 19; Bristol, 2.

Total, 67. The Counties where majorities of the members voted for the law, were, Essex, 13; Middlesex, 2; Hampshire, 9; Norfolk, 5; Plymouth, 7; Barnstable, 12; Dukes and Nantucket, 1. Total, 49.

The opponents of this law, therefore, show conclusively, that there has not been a fair and full expression of the public sentiment upon it; and that the elections for 1839, indicate a decisive expression against the law, calling for a modification or repeal of it at the present session.

Conclusion.

What then have the people a right to expect, and what can be done to settle this unhappy conflict in a question of public morals and private right? The answer of the opponents of this law, (who, though they may fail now, never will, and never can cease to oppose its arbitrary and unjust principles,) is "*regulate*, but not *prohibit*." Apply your laws to places and police, not to property or its uses,—to offences, not to innocent acts; and leave the rest to moral and social influences. Do not attempt to single out and separate classes of men according to their property, who may indulge on one side of the line, and who are to be restrained on the other; nor to prescribe the quantity these two classes may or may not purchase at a time.

All history, all experience, and all the attributes of human nature, are against the success of such a law.

Your law professes to aim to stop poor men's appetites by stopping sales in small quantities. How futile!

You leave the habits and the wants of society, which demand and will have this indulgence while the article is to be found. They will seek it the more eagerly the more your law attempts to restrict it. You leave the customers, and think to stop the sale, while you increase the demand by the reaction against your law.

You leave the free importation of ardent spirit,—you leave its manufacture,—you leave its unrestrained sale over fifteen gallons,—you leave wine, in all its gradations, unrestricted in any quantity, and by any one who chooses to expose it to sale;—and yet you expect such a law will put an end to tippling, and compel the poorer classes to resort to total abstinence!

Be sure of it, the end of this law, if it be unwisely persisted in, will show the folly of such an estimate of human nature.

We have history for it, and history is philosophy teaching by example. I pray your attention to the following extract from a highly authentic work, (McCulloch's Encyclopedia, page 1073,) shewing the effects of just such laws as this, designed to be prohibitory, which the ultra friends of temperance attempted to enforce in 1742, with the same mistaken zeal that influences the ultra friends of Temperance, in 1839. Let them not rely on the supposed difference in public sentiment now and an hundred years ago. If men love temperance more than they did then, so do they love liberty and hate arbitrary laws more. They can be more easily *persuaded* now, but cannot be so easily *driven*, as in 1742.

[*Extract from McCulloch, p.* 1073.]

"During the latter part of the reign of George I., and the earlier part of that of George II., gin drinking was exceedingly prevalent; and the cheapness of ardent spirits, and the multiplication of public houses, were denounced from the pulpit, and in the presentments of grand juries, as pregnant with the most destructive consequences to the health and morals of the community. At length, ministers determined to make a vigorous effort to put a stop to the further use of spirituous liquors, except as a cordial or medicine. For this purpose, an act was passed in 1736, the history and effects of which deserve to be studied by all who are clamorous for an increase of the duties on spirits. Its preamble is to this effect:—'Whereas, the drinking of spirituous

liquors, or strong water, is become very common, especially *among people of lower and inferior rank*, the constant and excessive use of which tends greatly to the destruction of their health, rendering them unfit for useful labor and business, debauching their morals, and inciting them to perpetrate all vices; and the ill consequences of the excessive use of such liquors are not confined to the present generation, but extend to future ages, and tend to the destruction and ruin of this kingdom.' The enactments were such as might be expected to follow a preamble of this sort. They were not intended to repress the vice of gin-drinking, but to root it out altogether. To accomplish this, a duty of *twenty shillings* a gallon was laid on spirits, exclusive of a heavy license duty on retailers. Extraordinary encouragements were at the same time held out to informers, and a fine of £100 was ordered to be rigorously exacted from those who, were it even through inadvertency, should vend the smallest quantity of spirits which had not paid the full duty. Here was an act which might, one would think, have satisfied the bitterest enemy of gin. But instead of the anticipated effects, it produced those directly opposite. The respectable dealers withdrew from a trade proscribed by the legislature; so that the spirit business fell almost entirely into the hands of the lowest and most profligate characters, who, as they had nothing to lose, were not deterred by penalties from breaking through all its provisions. The populace having in this, as in all similar cases, espoused the cause of the smugglers and unlicensed dealers, the officers of the revenue were openly assaulted in the streets of London and other great towns; informers were hunted down like wild beasts; and drunkenness, disorders, and crimes, increased with a frightful rapidity. 'Within two years of the passing of the act,' says Tindal, 'it had become *odious and contemptible*, and policy, as well as humanity, forced the commissioners of excise to mitigate its penalties.'—(*Continuation of Rapin*, vol. viii. p. 358, ed. 1759.) The same historian mentions, (vol. viii., p. 390,) that during the two years in question, no fewer than twelve thousand persons were convicted of offences connected with the sale of spirits. But no exertions on the part of the revenue officers and magistrates, could stem the torrent of smuggling According to a statement made by the Earl of Cholmondeley, in the House of Lords—(*Timberland's Debates in the House of Lords*, vol. viii. p. 338,) it appears that, at the very moment when the sale of spirits was declared to be illegal, and every possible exertion made to suppress it, upwards of SEVEN MILLIONS of gallons were annually consumed in London, and other parts immediately adjacent! Under such circumstances, government had but one course to follow—to give up the unequal struggle. In 1742, the high prohibitory duties were accordingly repealed, and such moderate duties imposed as were calculated to increase the revenue by increasing the consumption of legally distilled spirits. The bill for this purpose was vehemently opposed in the House of Lords by most of the bishops, and many other peers, who exhausted all their rhetoric in depicting the mischievous consequences that would result from a toleration of the practice of gin drinking. To these declamations it was unanswerably replied, that whatever the evils of the practice might be, it was impossible to repress them by prohibitory enactments; and that the attempts to do so had been productive of far more mischief than had ever resulted, or could be expected to result, from the greatest abuse of spirits. The consequences of the change were highly beneficial. An instant stop was put to smuggling; and if the vice of drunkenness was not materially diminished, it has never been stated that it was increased."

These, Mr. Chairman, are the views of the great body of your fellow citizens who ask for the repeal of this law. Their stake in society, in property, in good government, in pure morals, in virtuous habits, in the education and welfare of their children, is as great as that of the supporters of this law; and they claim to be as good citizens and as philanthropic as they are. Depend upon it, that if the zealous support of this law is to be made the test of true philanthropy and of good morals, it will ultimately be found that the most energetic, industrious, intelligent and honorable, of the people of Massachusetts, must be ranked as bad citizens. They will never approve, though they may not openly oppose, such legislation.

No, Sir. The opponents of this law are among the best, and most virtuous and liberal, of your citizens. They are the rational friends of temperance; but they are the friends of liberty and enlightened laws, as well as the friends of temperance. They say to you, as the agents of the people, commissioned by them to make only *reasonable*, *wholesome*, *just* and *equitable* laws;—"repeal this law, which is founded on a false principle in legislation, and adopt other means to aid the moral reforms of the day."

They say to you;—"Punish crime wherever you find it. Preserve peace and good order in all private and public places, so far as the community is concerned. Regulate trades and occupations, and the places in which they are carried on, within the limits of the constitution, for the public good. Break up all disorderly houses, all lawless disturbances of good neighborhoods; prohibit and punish drunkenness, gambling, lottery dealing and lewdness, because in themselves crimes, and because no supreme law of the landauthorizes their importation into the State, and mixing up with the mass of property. But do not deny to lawful property its essential quality of value, *sale;* or punish an innocent man to prevent others being guilty."

"Beyond these limits you cannot go, to enforce by law, any moral reform, however noble, however desirable. Resort, as all moral reformers who were not persecutors and bigots, always have done, to reason and argument, the still small voice of moral suasion, and not apply the terror of the law, to restrain poor men's appetites. Take away the customers of the dealer by persuasion and *example*, and you will then have no occasion to resort to pains and penalties against a lawful occupation, or to brand as criminals upright citizens.

Mr. Chairman, and gentlemen of the committee: I have now discharged my duty to the memorialists, in opening the grounds of their objections to this law. They will have the aid of abler counsel in its close; but, whatever may be held to be the extent of professional latitude in, arguing a cause for, a client, I desire to be distinctly understood, that in a great question like this, affecting public morals and fundamental principles of freedom, I would not appear as the advocate for the side my judgment and conscience did not both deliberately approve.

I stand here, not less the friend of temperance, because I am the friend of liberty. In this law I see not only a blow aimed at liberty, but at the cause of temperance, and in defence of that cause, *in its original purity and purpose*, I claim a right to speak; a right, older by many years, than that of the most relentless clamorers for this law, who affect to denounce all who oppose it, as the enemies of temperance.

Here is a record, Mr. Chairman, beginning in April, 1827, prepared by me, as Secretary of a meeting, held to form a total abstinence society, which was persevered in until the following entry was made:—

"March 11, 1828.—The Secretary appeared at the Vestry, but finding only one person and the Sexton present, retired, there not being a quorum to adjourn the meeting."

Two years after this, and by the perseverance of the same individual, with two others, a numerous society of over five hundred members, was formed; and, in looking at the first printed quarterly report of that society, made by myself, in 1830, I find the same sentiments I advocate now, in these words:—

"All this moral influence has been put into operation, within four years past. There has been no *forcing system*, and there can be no appeal to selfish, sordid, or ambitious motives."

"We would enforce no man's conscience beyond its own honest promptings. We judge no man, we condemn none; nor would we, if we could, take one particle from the respectability or usefulness of any citizen who indulges in an habitual, temperate use of ardent spirits. In all other relations except the moral influence he might exert in the cause of temperance, by example as well as precept, he may, perhaps, hold a higher place in the estimation of the virtuous and intelligent, than any member of a temperance society. But, in that relation, can he exert the healthful influence that, as a moral, an enlightened, and above all, a Christian member of society, he ought to exercise?"

"The strength of Temperance Associations will go on increasing *so long* as the friends of Temperance constitute, as they now do, *solely* a *moral* party; but the moment these associations *shall turn aside* from their *legitimate purpose*, to mingle in party strife, whether in *politics* or religion, that moment, be they ever so strong, they will become shorn of their strength, and will fall an easy prey to the Philistines. *Persuasion*, and not *coercion*, example and not *dictation*, are the legitimate weapons of our *moral* warfare."—[1st Quarterly Report, July 1830, of the Providence Association for the Promotion of Temperance.]

Such was my temperance faith then, such is it now, and from that day I have not ceased to show my faith in practical total abstinence, and in moral suasion, by my *works*.

Pardon me for this allusion to my personal relations to this cause, but the unworthy attempt made to identify opposition to this law with opposition to temperance, may seem to justify it.

Here then I leave the cause of the memorialists. It has been patiently heard thus far; let it be fairly judged. The Executive who signed this law, now intimates strongly in his address to both Houses, doubts of its expediency or practicability. He invites them to a calm and dispassionate consideration of the whole subject. The memorialists earnestly desire the same; and if this matter, (aside from the pride of opinion, which often misleads men to persist in error rather than confess wrong,) can command the calm, dispassionate, and deliberate action of the Legislature, there must be but one answer to the prayer of the memorialists? "It ought to be granted!"

TESTIMONY INTRODUCED BY THE MEMORIALISTS.

Jan. 29, 1839.—Samuel A. Eliot, Mayor of the city of Boston, being sworn, and questioned, testified:—

That he had examined the law, and thought it would be extremely difficult to enforce it to any extent, in the city. In the position he occupied, as the head of the police, he had never allowed himself to doubt the practicability of enforcing any law; but this was different from any that had come under his observation. It would require unusual energy and even physical force, through a very great addition to the police, to cause it to be carried into strict execution. He could not undertake to do it, with the present disposable means of the police. He had had much practical acquaintance with the subject, and was fully satisfied, and thought the opinion would ultimately become general, that *regulation promotes temperance, and prohibition increases intemperance*. A law of regulation could be enforced, but not of prohibition, to the extent this proposed.

In answer to an inquiry as to the effect of the recent attempt to introduce stronger laws against the sale of ardent spirits, the Mayor stated, that

"During the past year, according to the reports of the night watch, it appeared that there had been an increase of the number of persons detained for drunkenness during the night. This could be only partially accounted for from the fact that there had also been an increase in the number of the night police. He could attribute it to no particular cause. The population of the city had increased but little in that time."

"The trials at the Police Court, for drunkenness, had gradually increased for some years. In 1835 the number of cases tried was 317, at an expense of $1499. In 1836, 367 cases, at $1724. In 1837, 444 cases, at $2,686. In 1838, 676 cases, at $3,177. He believed that the system of granting licences for the sale of spirituous liquors, in this city, in the present state of society, had a greater tendency to check the evils of intemperance than the prohibition of the sale of spirituous liquors."

"There were certain rules which regulated the Board of Alderman in granting licences. The number of licences granted since 1830, was as follows:—in 1830, 500; in 1831, 690; in 1832, 410; in 1833, 492; in 1834, 394; in 1835, 300; in 1836, 385; in 1837, 360; in 1838, 408."

"A large proportion, more than half of the commitments by the night watch, had been for intemperance—which was also a frequent cause of disorder and disturbance."

"He thought it would be extremely difficult, if not impossible, to discriminate between the sale of wine by the glass, and other kinds of spirituous liquors. A permission to sell wines, would doubtless be used with impunity to sell other liquors."

"There would probably be great opposition to the law from those who were accustomed to sell spirits, and those who were accustomed to buy it—although, doubtless a large proportion of the sellers would support the law if it should not be repealed—or any other which might be enacted."

"He believed that an intemperate man would be likely to drink oftener, and a temperate man to indulge more, in consequence of the passage of this law prohibiting the sale of spirituous liquors."

"In his opinion, the granting of licences had a tendency to prevent violations by the unlicensed persons."

On the cross examination by Messrs. Crosby, Bolles, Sprague, and others, who appeared in support of the law, the following facts were illicited :—

"Has the granting of licenses a tendency to increase or diminish drinking?"

"Undoubtedly the granting of licenses would check intemperance."

"What portion of the prosecutions has resulted in convictions?"

"It is impossible for me to tell; probably most of them."

"What fact have you to show that the license law has increased intemperance?"

"I know of no fact to illustrate it, except from what has come to my knowledge. I know it to be so."

"What proportion of committals to the watch-house are for drunkenness?"

"I do not know. A large proportion. More than half."

"You say that since 1834, the number of drunkards has increased. Has there been a corresponding increase of other offences, such as theft, &c.?"

"I do not know positively, but believe not."

"How great an increase of the police would it take to enforce the new law?"

"I think it would take every bayonet in the city to enforce it."

"Would licensing houses of ill fame decrease that vice?"

"I cannot say. The popularity of the vice is not the same. One is an acquired ropensity. The other not."

"Do you mean to say that the whole military force of the city would be requisite to enforce the license law?"

"The attempt to enforce it would be so hazardous that it is impossible to say what means would be necessary to preserve order."

"You say that intemperance has increased during the last year, in consequence of the law. Do you mean that the drunkard gets drunk oftener, or other people drink more in anticipation of the enforcement of the law?"

"I believe both."

[We regret that owing to the noise and confusion of persons constantly coming in and going out of the hall, and the low tone of voice in which the questions were put and answered, we were unable to hear a large portion of the testimony. What we did hear of Mr. Eliot's answers appeared to be very prompt, very much to the point, very appropriate, very apt, and he did not seem at all disconcerted by the severe cross questioning which he underwent.]

THE MAYOR'S LETTER TO MR. DEXTER.

City Hall, Jan. 30, 1839.

My Dear Sir,—

It is stated in one of the papers, this morning, that I was examined as to the probable effect of the law of the last session, respecting licensing. I do not recollect that any direct question of that kind was put to me, and I avail myself of a few moments leisure to state to you what, in my opinion, will be its effect, if it be persevered in by the Legislature. Some three thousand or four thousand male adults, legal voters, in this city, will find themselves suddenly cut off from their accustomed means of indulgence of established habits—some, of the temperate, and some, of the intemperate use of ardent spirits. Of these, a large proportion will be entirely deprived, by want of means, from the power of obtaining any of their usual beverage, except by some evasion of the law, or open disregard of it, or by the very bad expedient of clubbing together to purchase fifteen gallons, and then dividing it. Besides these, a large number of dealers would lose their customers; and it cannot be supposed that all these persons will submit quietly to what they regard as an infringement of their rights. Open violations of the law, and secret evasions of it, will take place; and the enforcement of it can but set one portion of the population against

another, and produce a scene of confusion and tumult unparalleled. In all this there is not the least progress of temperance.

I was asked yesterday if great good would not ensue from the law? I answered—none which may not be produced by other means, without the agitation which is certain to be the effect of this. The temperance party seem to think this law is the only means of doing good in the cause. They regard it as a father does a pet child—a paragon of perfection, which it never was. Other laws may be devised, in my opinion, much more effectual; and a great objection I have to the law, is the probable opposite tendency of it, viz.—to intemperance. Restrain,—make it *difficult* for the men I have spoken of above, to indulge themselves to excess, but not *impossible*. Leave them to their own free moral agency—put down the limit from fifteen gallons to a quart, or a pint, so that the poorest man may get intoxicated if he chooses; and then close the dram shops, i. e. say that none shall be mixed or drunk on the premises of the seller, (excepting taverners,) and I would guarantee, for a small premium, a great progress to the temperance cause, in a short time.

In answer to the question asked me yesterday, as to the facts on which my opinion was based, that licensing had a tendency to check intemperance, I ought to have said, in addition to the increase of intemperance in the city, that statements, which I believe to be true, have been often made to me of the increase of the sale of ardent spirits by wholesale dealers, the last year,—especially to those markets where prohibition has taken the place of regulation. I do not know whether this is evidence, but I was asked the grounds of my opinion, and had I been sufficiently collected, should have answered in this way.

I observed an attempt to make it appear that the increased vigilance and activity of a temperance man as City Marshal, had revealed all the increased number of cases of drunkenness. But he has nothing to do with those cases—they are reported and complained of by the police officers and the watch. He, by the way, is as much opposed to the late law as I am.

I put this note into your hands to make use of as you deem expedient. If you think proper to call on me to make such statements to the committee, viva voce, I am ready; but as I have three other legislative committees to wait upon at this time, I should rather be excused, if this may be received instead. I write as I should speak, under the responsibility of my oath.

Yours very truly,

SAMUEL A. ELIOT.

To Franklin Dexter, Esq.

Jan. 31, 1839.—E. J. Baker, of Milton, Norfolk County. In this County no licenses have been granted by the County Commissioners, since 1835. The prohibition has increased the sale in many places. Previous to 1835, there were about ten licenses in Milton, and the places generally well regulated. There are now six or eight places where spirits are sold. The better class get it at particular houses. Others get it in cellars and secret places, and at Irish houses. So long as licenses existed, the sale was confined to licensed places. The sale has increased, and drunkenness has increased, within the past year. Has not seen so much drunkenness for six years, as in the past year. The law was evaded, and the Sunday law had not been enforced. It was openly violated in many places. He called at a tavern the other day for whiskey punch, and was told he could have wine punch,—but the wine punch was made of whiskey.

The name of the taverner was demanded by the counsel for the remonstrants. The witness replied that he would give any information in his power, to aid the committee in these inquiries, but he could not disclose the names of persons, to subject them to prosecution.

After a discussion by the counsel on both sides, Mr. Senator Walcot, Chairman of the Committee, without taking a vote in the Committee, decided that the name must be given. Witness declined, and the Chairman refused to hear him any further.

Josiah Bradlee, of Boston, was called, and Mr. Hallett proposed that the form of oath be to make true answers to questions, which was the proper Parliamentary form. Mr. Lincoln, of Worcester, moved that the usual form of the judicial oath be administered, and the Committee so ordered.

Mr. Bradlee testified that he was an importer of spirituous liquor. Is a large dealer in brandy and gin, and imports and sells as much as he ever did. His general sales are probably larger than ever. The demand is beyond the supply in the market at present, particularly for brandy. People were very dry. A cargo of brandy was expected, and they were calling for the article earnestly. The whale ships from New-Bedford, do not carry out rum now. There could not be any considerable quantity taken out of New-Bedford in that way. If sent there, it must be consumed in some other way. He had for many years supplied orders for the whale ships. Formerly they carried out spirits, but now it was voluntarily discontinued, without any law requiring it. He had had only two orders for rum for whale ships, in seven years.

From his observation about the wharves, he believed there was as much spirituous liquor shipped to New Bedford now, as there ever was. Last week he saw seven pipes of brandy put on board a vessel for New Bedford. From all he saw, he was satisfied that there was no diminution in the quantity of spirits sent to New Bedford, but rather an increase. Saw six casks yesterday going on board a New Bedford packet, and the Captain said he had thirty barrels of spirits besides, then on board.

On cross examination. The shipment of spirits to New Bedford, is certainly greater than ever. More or less brandy, gin, rum, &c. are constantly along-side the New Bedford packets, in front of my store. Twenty years ago, orders were universal for ardent spirits, in fitting out ships. Now they are entirely out of use. My orders have discontinued entirely.

Ezra Weston, Jr. City Marshal of Boston.—Has the immediate superintendence of the police department. I should suppose that the law of 1838, could not be enforced in the present state of society. It would require, in order to enforce it to any extent, means entirely different from the ordinary mode of enforcing the laws. Cannot say what number of extra police, but it must be very large. A large portion of the disorder in the city arises from intemperance. In my opinion, this law will not diminish, but rather increase this evil. I do not think it will decrease, but be likely to increase, the number of places where liquors will be sold. The secresy of the places would be likely to increase vice. The secret places are much more injurious than open and licensed ones. These last are under the eye of the police. The former it would be difficult to reach. The present number of licensed places is four hundred. If no licenses were granted, there would no doubt be as many places open, and as many to sell without, as with licenses. Temperance would be better assisted by regulation than by prohibition, unless other means than can now be used, are resorted to. Have taken an interest personally in the subject of temperance. From my own observation am satisfied that places where ardent spirit is sold, are more frequented now than formerly. Know no other cause for this than the effect of restraint by law. My opinion is, that many drams are taken because those who drink them believe they are asserting a public and private right.

On cross examination. Most of the cases of intemperance that fall under the City police, come from low grog shops—places that are not licensed. But very few of the licensed places are low. Most of these low grog shops were licensed many years ago, but more care is now taken. As to the enforcement of the law in Boston, it would depend mainly on the sense of obligation the dealers and buyers might feel to observe it. The nature of the evidence is difficult for the police to get at, and the mode of doing it, if pressed, would be unusual. There are probably three hundred tenements in which the article is sold without license. Believe that at least half, say two hundred, of those now licensed, would continue to sell if this law is not repealed.

[Rev. Mr. Cobb, of Waltham, one of the agents of some of the Societies, employed to appear in behalf of the law, here proposed a very long and elaborate query as to the moral effect of a moral law, in producing moral influences favorable to the observance of the moral law; which the intelligent and very correct witness, said it was impossible for him to comprehend. The examination then proceeded.]

Question, by Mr. Upton, of the Committee. Which would do the most injury; a public respectable place, or one of the secret low ones? *Answer.* Decidedly the latter.

By the same. What would be the effect on public morals, if all the respectable dealers should be stopped by this law? *Answer.* It would have a very bad effect upon the morals of this city, to drive the business out of respectable hands, because it would go into bad ones, and be productive of much greater evil in the communitty. If this law went into general operation, such he believed would be the effect as to the respectable and intelligent dealers. If all licenses were denied, the sales would be as great, but not so public, and not so likely to be detected where the law is violated. Much the larger number of intemperates taken up in Boston, are foreigners, but residents of the city. Such persons would be most likely to find supplies, at unlicensed places, if all licenses were withdrawn.

George Penniman.—Is a clerk of the Granite Rail-Way Co., in Milton, six or seven miles from Boston. Formerly there was one house licensed there. The traffic is now carried on clandestinely, and there is more liquor used, than when it was sold openly. An Irishman runs a wagon to Boston, and the workmen send in and get supplies. They carry it home, and instead of drinking occasionally, as before, at the public houses, they drink more, privately. If I wanted liquor, I should send to Boston for it; but if I asked an Irishman to get it, and promised to ask no questions, he would bring it to me in two minutes. New rum sells at a dollar a gallon,—worth forty cents in Boston. Drinking has increased since this law, and there is more drunkenness than formerly in that place and the vicinity.

The Company do not allow liquor on the works. They consider it for their interest to exclude it. If the whole country were to adopt prohibition, it would work well, if it could be enforced.

In answer to questions by Mr. Upton. There is more used than there was when

there was a public licensed store. Thinks the reason is, because the laborers now keep it in their houses, and it is a shorter way to a man's chest or closet, than to a shop.

February 1, 1839.

Moses Williams of Boston, of the firm of J. D. & M. Williams, was offered as a witness to show the amount of sales made to counties in which all licenses have been denied.

Before taking the oath he wished to understand the views of the Committee as to one question that might be put to him. On Tuesday last, he had taken from the books of ten or twelve distillers and dealers in Boston, the amount of sales of spirits made the last year, and sent to neighboring Counties where there are no licences. He was one of those dealers, and they were all ready to testify to the correctness of the statement, respectively. He had supposed that the Committee, in obtaining statistical facts, would be satisfied with the oath of individuals who have made the sales, without requiring the names of their customers. From what occurred at the last meeting, it would appear that the names of the buyers would be required. He reserved the privilege, in his business transactions, of not publishing the names of his customers, without their consent, unless he was compelled to do so, and if the committee did not wish to receive his statement, under oath, with that qualification, he did not feel at liberty to make it voluntarily.

Mr. Stowell of New Bedford one of the Committee, objected to receiving any statement, unless the names of the persons it was sold to were given. If 79,000 gallons had been sent to Bristol County, he wanted to know who had got it, and what had been done with it. If he believed it had gone there, he should be in favor of the repeal of the law.

Mr. Blake of Boston, did not see the necessity of splitting legal hairs, in a general inquiry before a Committee of the Legislature. The names could not be material, and would give no additional information on which the Committee could act. The facts of the sale, and the conveyance to these Counties, were the prominent points of the inquiry.

Mr. Lincoln of Worcester, insisted on the names. The object of the inquiry would be, a cross examination, to test the truth of the statement of the witness, and follow it out in all its ramifications.

Mr. Brayton of Nantucket, would be willing to adopt the rule to ask no person to expose the name where it would subject the witness to a criminal prosecution!

The Chairman was of opinion that if the question was put it must be answered, and after a discussion by Messrs Sprague and Hallett, for and against, the Committee decided that the names must be given.

Mr. Hallett said he regretted the decision, as it obliged him to withdraw all further testimony on the part of the memorialists who would now attend the hearing as spectators.

The Chairman called on the opposite side to proceed, but not expecting to be heard at this sitting, they were not prepared, and the Committee adjourned.

At the next meeting Mr Dexter appeared with Mr. Hallett for the Memorials, and urged the reconsideration of the decision respecting the testimony, but the Chairman inflexibly adhered to it. It was sustained by a majority. Mr. Hallett then read and presented the following statement:—

PROTEST PRESENTED TO THE JOINT COMMITTEE OF THE LEGILSLATURE ON THEIR RULE EXCLUDING TESTIMONY.

The opening Counsel for the Memorial of Harrison Gray Otis and others, respectfully submits the following to the Joint Committee of the Legisalture, in behalf of the Committee of citizens who have petitioned for the repeal of the law of April 19, 1838.

The citizens who have appeared before the Joint Committee of the Legislature, with a view to aid their inquiries into the matter committed to them on the Memorial of Harrison Gray Otis and others, and the remonstrances against said Memorial—viz: whether the License Law of April 19, 1838, ought to be repealed; would respectfully present their protest against the rule adopted by the Committee relative to the examination of witnesses, which rule has unexpectedly put it out of their power to produce important and material evidence bearing upon the question of the inexpediency and impracticability of that law, as a prohibatory act against the sale of spirituous liquors.

The subject referred to the Committee of the Legislature, is one relating to a general law, and not a private act, and affects all the citizens of the Commonwealth.

The Memoralists, therefore, do not appear as parties to the issue, nor as representing a private interest—but voluntarily, in the exercise of a right common to all and secured to the people, viz. "to give instructions to their representatives, and to request of the Legislative body, by way of address, petitions or remonstrances, redress of the wrongs done them" by the operation of the laws.

They also appear as petitioners, under the general right of the citizens, secured by the Constitution, to require of their law-givers an exact and constant observance of the fundamental principles of the Constitution, "in the formation of the laws *necessary* for the *good administration* of the Commonwealth." Believing this law to be wholly unnecessary, for that purpose, they ask for the revision of a law, which they believe the Legislature ought to revise under the provision that requires them to assemble frequently "for the redress of grievances, for correcting, strengthening and confirming the laws, and for making *new laws*, as the *common good* may require." They disclaim therefore, either the interest or the liabilities of a party to a suit or to a private petition.

The inquiry before the Joint Committee is, whether the law of April 19, 1838, is "*necessary* for the good administration of the Commonwealth," and whether the common good requires that law to be repealed, and a new law to be made.

To form a just opinion in a matter where the operation of an existing or proposed law on the common good is doubtful, and where the citizens are nearly equally divided as to the beneficial or injurious effects of such law, the Legislature must, to a great extent, rely on such facts as can be laid before them; not as judicial evidence, but as means, as far as they go, of enabling men of sound judgment to arrive at correct conclusions.

For this purpose alone, we conceive, can Legislative Committees investigate facts and receive testimony or statements from citizens in relation to a public law; because the Constitution forbids the Legislature from "ever exercising the Judicial power." They cannot, therefore, exercise the powers, and process, or be restricted to mere judicial forms of Courts of law, in receiving testimony; because the purpose is not to try or to punish, but to ascertain from the best means within their reach, whether an existing or proposed law is "necessary" and "for the common good." In the event

then of being unable to obtain all the facts that might be desirable to arrive at certain results beyond all possibility of doubt, would the Legislature entirely reject such information and such facts presented to them as might tend to aid in forming some opinion of the effect and operation of a law disapproved by a large portion of the people, as unnecessary, ineffectual and unjust?

An intelligent Committee could always discriminate as to the value and credibility of testimony; and if a witness should decline answering a question, on the ground that it might implicate himself or others, they could never be at a loss to determine how much it ought to deduct from the weight of his whole testimony. They may exercise a dispensing power, so as to get at substantial truth, without invading private relations of confidence.

The clear distinction between Judicial and Legislative testimony we conceive to be this—Judicial evidence *binds* those who are to act upon it. The juror is sworn to give his verdict according to the evidence, and therefore none but strictly judicial evidence should be admitted.

A Legislative committee of inquiry as to a public law, are not *sworn* to decide according to the testimony, nor are they bound to regard it at all as controlling their own judgment and convictions of right and expediency. The evidence is only another form of argument to enable them, as far as practicable, to arrive at correct conclusions, and they have full power to recommend to the Legislature to make or unmake a public law, without any evidence at all, or with such evidence as it was in their power to obtain.

A Judicial tribunal cannot act on matters of fact, unless they are judicially proved, nor can it excuse a witness from answering any question a party has a legal right to put. A Legislature may rightly act on mere suggestion, and may excuse witnesses from answering, on merely personal and confidential relations.

The question, then, is, whether a Legislative Committee on a public law, should exclude all but strictly legal and judicial testimony, and should the witnesses before them be bound to conform to strict judicial rules of evidence, or be entirely excluded?

Under the rule of Judicial evidence insisted on by the Committee, every witness is excluded who will not answer every question that might be put to him in a court of law. If the Committee have power thus to exclude testimony, on a technical objection, ought they not first to have the power to summon witnesses and to compel them to testify?

In the present case, they have no such power, either to summon, to compel attendance, or to enforce answers; nor can they give this power, by any process, to the memorialists. If, then, they cannot aid the memorialists in compelling the attendance and disclosures of witnesses at all, should they reject the testimony which is offered, as far as the memorialists can prevail on witnesses to testify; thus in effect, holding the citizens, who, in a matter of general interest, desire to aid the Committee in the "formation of the laws necessary for the good administration of the Commonwealth," responsible, as a party, for full disclosures from witnesses, whom neither they nor the Committee have any power to summon or compel to testify?

The Committee of the Legislature are not empowered to send for persons and papers. It is not in the power of the Memoralists to invest them with that authority. We have shown them what can be proved, and have used all the means in our power, to furnish the testimony. If the Committee reject this and take no means which they may have, if any, to procure the evidence, it necessarily excludes any evidence whatever being given on those points of the investigation, which would show that prohibition tends to increase demand; for by the rule, as adopted, the Committee

of the Legislature exclude all testimony, if, in a single particular, it does not conform to strict rules of judicial evidence. If the Committee desire to obtain the evidence, it is in their power to enforce it, not in ours.

The citizens who appear for the Memorial, have done all in their power to procure the particular evidence which has been excluded. At the commencement of the inquiry, the Chairman of the Committee was applied to by the Counsel for the Memorialists, for a process to summon witnesses. He declined, not having the power to summon. He was then requested to invite the voluntary attendance of such as should be named. This was also declined. Consequently the Counsel for the Memorialists could only invite, and could not require, the attendance of any citizen.

If the Committee of the Legislature have not the power to summon a witness before them, can they, if he voluntarily appear, exercise the powers of a Judicial tribunal over him, and compel him to remain in attendance, and to answer all questions put to him? It is presumed they cannot. Must, then, the refusal to answer a question that may tend to criminate others, and the answer to which the Committee has no power to enforce, necessarily exclude the witness as incompetent to testify at all? Must it go to his competency in fact, and not to his credibility?

To assume that those who have conducted the inquiry, on the part of the Memorialists, have the power to compel witnesses to appear, and answer all the proposed questions, and that, therefore, they are responsible for the withholding of names in private business, would be incorrect, and in fact unjust to them. The practical question is, we conceive, will the Legislative Committee receive such evidence as we can obtain, or will they reject the whole because we cannot get more.

The state of the case, as we understood it, at the close of the last hearing before the Committee, was this:—The law of 1838 proposes prohibition of the sale of ardent spirits under fifteen gallons, as a means to promote, not *temperance*, which implies a moderate use, but total abstinence from their use, as a beverage. The inquiry is, will such a law diminish the sale and consumption of the article, and promote the proposed end of the law. To aid in such an inquiry, statistical facts, as to the increased or diminished amount of importation into the State, and of the sales of the article in one part of the State, to be sent to other parts of the State, are highly important. The memorialists petition against the law of prohibition "because (in the language of the memorial,) it must fail of the professed object, and will not succeed in restraining appetite, which will be indulged by combinations and evasions, to a greater extent than without this ineffectual attempt at restraint."

They have shown, by the best possible testimony, that of the Mayor and Marshal of the city of Boston, that a law of regulation can be better enforced, to promote temperance, than a law of prohibition. They also show, from the Custom House returns, that the increase of imported ardent spirits in that city, the past year over the former, is 106,000 gallons, after deducting all exported; and that the whole amount imported and left for home consumption the last year, was 393,981 gallons. The increase is the more remarkable, as the pecuniary pressure of 1837 must have operated greatly to diminish the importations of 1838, in this as in other articles.

They next proposed to show that the sales, at the place of importation, have increased, as the pressure of the laws against it have increased; and that large and increased sales of foreign, and especially domestic spirits, have been made the last year, in this city, to be sent to the counties of Bristol, Nantucket, Plymouth, and Norfolk, in which the law of prohibition, by entire refusals to license, has in effect prevailed; and that those, who have made these sales, have found the demand increase since 1833,

especially the past year. The bearing of such facts is direct upon the expediency and practicability of the existing law, insomuch that one of your honorable Committee stated that if convinced they were so, it would operate on his mind to induce him to go for the repeal of the law.

The Counsel for the Memorialists, proposed to prove these statistics in the following manner:—The private books of ten manufacturers and four grocers in Boston, show, that they sold, of ardent spirits, from January 1, 1838, to January 26, 1839, to be sent to those Counties, on the orders of persons not engaged in exporting them, an aggregate of 79,643 gallons for Bristol County, 14,213 gallons for Nantucket, 30,543 for Plymouth, and 42,546 for Norfolk, Bristol and Plymouth: a total of 166,945 gallons, equal to 1518 puncheons, of 110 gallons each, averaging, by the census of 1830, at the rate of *four and a half quarts* of ardent spirits to every man, woman and child, in those counties.

This sale could be shown from a very few sources, the bulk of it being domestic spirits; and, it would obviously not include all that had gone in that direction from New York, Providence, and other sources. Does it not then raise a reasonable doubt as to the efficacy or possible enforcement of a law of prohibition?

This statistical information being highly important to enable the Legislature to judge, whether a law of prohibition, is not in its effects, a law to *promote*, rather than restrain intemperance; the question is also important how can it be got before that body. The remonstrants, by their Counsel, raised a technical objection on the cross examination, that the fact of the sale should not be given, unless the names of the purchasers were disclosed also. The witnesses, to verify these facts, had been sworn. They are beyond the most remote suggestion as to veracity, but they cannot be compelled to disclose the names of their customers, though ready to give every other fact in their power. The facts relate to their private business, and are contained in their books, over which the Legislature can have no control. Some of them are signers to the memorial, and some are not; but in neither case, has the Counsel or the Legislative Committee any power to compel them to disclose the names of their customers. They do not know, nor do they assume, that these customers have violated any law; but in the relation of merchant and purchaser, they say they hold it a point of honor, not to voluntarily disclose their private business, so as, indirectly to be made informers themselves, or to mark out individuals without their consent, for the espionage of either moral reformers or legal informers. The very material difference between *volunteering* such testimony, and giving it under compulsory process, to criminate others, is obvious to every honorable mind.

The Legislature has never exercised an inquisitorial power, to compel one class of citizens to testify so as to lead directly or indirectly to the prosecution of another class; especially in a case like this, where the only material facts wanted, as a matter of statistics, viz. the sale for, and sending to, certain places, can be fully substantiated, beyond a doubt, without this invasion of the private relations of business.

The Memorialists cannot obviate this difficulty. Those of them who have not the facts, cannot control those who have; nor can those, whether Memorialists or not, who have the facts in their possession, disclose the names of individuals, if, as honorable men, they feel bound not to do so to their probable injury, unless required by absolute necessity, or moral obligation, or due process of law, neither of which is applied in this case.

A Committee for legislative inquiry on matters of public concern, may exercise discretion and dispensation as to the form in which the evidence shall be received. It may be by statements not under oath, which is not

without precedent in this State. In the British Parliament, the great mass of statistical and other facts, collected by committees, in reference to general laws, is received as voluntary statements, witnesses not being sworn before such committees.

Disclosures that might effect the pecuniary and private interest of third persons, are frequently dispensed with by legislative committees of inquiry. In the exercise of full powers to examine the banks charged with a violation of charter, a Committee of this Legislature, in 1835, did not require the officers of the banks, under oath, to give the names of their customers, and the Sub-Committee appointed to inspect the books, made no disclosure of the names of persons on the discount sheet; regarding the confidential relation of the banks to third persons.

In the investigation of the United States Bank, by a committee of Congress, with full powers, in 1834; the Directors of the Bank, when summoned by a writ of *duces tecum*, before the Committee, refused to exhibit the names of Members of Congress, and others, to whom the bank had made discounts, or to state the contents of "the credit books of said bank, showing the indebtedness of individuals," alleging that, though ready to give all necessary information to show the pecuniary condition of the bank, they could not disclose the names of individual debtors, with *"a necessary regard to the rights of others."*

A majority of the Committee reported this refusal to the House, as a contempt, and moved for compulsory process; but the House did not sustain the motion. The report of the minority, presented to the House, by Hon. Edward Everett, and Hon. W. W. Ellsworth, justified the course pursued by the witnessess in the investigation, on the ground that "they had placed themselves where American citizens, conscious of their rights, should place themselves, under the protection of the laws."

This precedent is not cited as parallel to the present case, farther than it may rightly go in the estimation of the Joint Committee of the Legislature, who have deemed it their duty to require a similar disclosure by witnesses before them, of the names of individuals, not parties to the issue, nor present, whose pecuniary or other interests may be injuriously affected thereby. Of the refusal of the witnesses, summoned before the Committee of Congress, to disclose the names of their customers, the report of Messrs. Everett and Ellsworth says,—"the call related to concerns *involving the highest confidence of individuals*, and not to be divulged, except under legal compulsion, *without the grossest breach of faith.*"

Such is precisely the relation of the witnesses we have offered, to their customers; and the propriety of the exemption from a breach of confidence in business transactions, except under compulsory process, would seem to be much stronger in this case than in the one cited; because the Committee of the Legislature, who decline receiving any other testimony from the witnesses, unless they will voluntarily commit this breach of confidence, have not the original power of summoning a witness, or enforcing disclosures, and must rely on voluntary testimony alone, or reject all testimony, to aid them in reporting to the Legislature their opinion of the expediency or inexpediency of a law of prohibition.

The call for names was not made by the Committee to satisfy themselves of the fact of the alleged increased sale and transportation of liquors to particular places, the Chairman of the Committee having stated that it was not desired by them, but that the counsel for the remonstrants demanded, and were entitled to it, to enable them to trace the uses to which the article may have been put. The Remonstrants not being a party to the issue before the Legislature; and appearing merely as citizens to aid the Committee in forming a correct opinion to report to the Legislature, the abso-

late right of such a demand on their part, not originally desired by the Committee for their own information, is not clearly perceived ; nor could it aid the investigation, should the names be given, because the Committee of the Legislature, having no power to summon the purchasers here, or to compel them to criminate themselves if here, could not proceed any farther with the names than without them, in tracing the precise uses to which the merchandise may have been put.

We have offered to show by the testimony of manufacturers and grocers, and their clerks, (the particulars of which are appended to this protest) the entry of sales in their books, with specific dates and amounts in every item ; the orders for specific places, and the actual forwarding of the article to persons known to be taverners and retailers in those counties, with the particular mode of transportation ; in a word, every fact connected with the transaction, except the names of individuals who might be injuriously affected thereby, in their private interests.

All these facts, except the names, might have been given, on the examination in chief, reserving the right, on the cross-examination, to withhold what could not be voluntarily disclosed, with "a necessary regard to the right, of others," and without "involving the highest confidence of individuals." But it was deemed more respectful to the Committee, and more honorable to the witnesses, frankly to state the extent to which, without compulsory process, they could testify. Such a course it is confidently believed, cannot, in the minds of the Committee, or of any honorable men, prejudice any cause.

At the last hearing before the Committee, the Counsel for the Memorialists desired delay for deliberation as to the course they would pursue under the rule adopted. It was also suggested, as a means of fully satisfying the Committee of the Legislature, that a Sub-Committee might have the inspection of the books without a public use of names, if this would aid in the developement of the facts. This, however, the Committee did not think proper to adopt.

The memorialists were accordingly, by the operation of this rule, deprived of the right of producing evidence of material facts, and therefore deemed it proper, as they could not not go on under the restrictions put upon the inquiry, to withdraw all further testimony or any right they might urge, to restrict whatever testimony the Committee may think proper to receive from the other side of the question ; respectfully protesting against the rule, and reserving the right at the end of the hearing on that side, to be heard by their closing Counsel.

In relation to the testimony to be offered by the Remonstrants, we would respectfully suggest, that should the evil effects of intemperance, or the beneficial operation of prohibitory laws, on pauperism, crime, morals or government, be presented as the basis of an argument or inference, why the Legislature should enact such laws against the sale of alcohol under fifteen gallons, would not the Committee, by the rule applied to us, reject such evidence, unless each fact is Judicially and fully proved, and the *names* of the individuals, on whom such alleged effects have been produced, disclosed, in order to enable those who doubt the application of the facts, to trace them in all their ramifications, and ascertain whether the results, or a portion of them, are not fairly attributable to some other evils and vices in society? The object of presenting this statement to the Committee, is to avoid any misapprehension in their minds, or with our fellow citizens, as to the position in which the Memorialists conceive they stand, in this stage of the enquiry.

Feb. 5, 1839. Read and presented to the Committee.

Sales of ardent spirits in 1838 *for Counties where no Licences were granted.*

Statement for the sales for Bristol County, from January 1, 1838 to January 26, 1839.

Population in 1830, 49,474.

	Gallons.	Gallons.
Barnard & Trull	10,748	
Josiah Stickney & Minot	27,825	
A. S. Holmes	907	
Foss & Gilmore	7,605 1-2	
A. H. Bowman	6,519	
Ezra Trull	1,733	
Luther Felton	1,886—57,223 1-2 by 7 Distillers.	
Wright Priest & Co.	10,204	
J. D. & M. Williams	3,578 1-2	
R. M. Morse & Co,	3,584	
Silas Pierce & Co.	3,367	
Littlehale & Co.	1,686—22,119 by 5 Grocers.	

Total 79,643, equal to 724 puncheons of 110 gallons each.

Sales for Nantucket during the same time. Population 7,203 in 1830.

	Gallons.	Gallons.
Wright, Priest & Co.	5,385	
Robinson & Wiggin	1,680	
Josiah Stickney & Minot	4,183	
H. D. Gray	2,964 1-2—14,213 1-2, equal to 129 puncheons of 110 gallons each.	

Sales for Plymouth County during same time. Population in 1830, 42,993.

Barnard & Trull	5,721
David Barnard	6,000*
Josiah Stickney & Minot	165
A S. Holmes	3,150
Gardner Brewer	1,783
Foss & Gilmore	5,385
Ezra Trull	1,768
Smith & Morse	024
Luther Felton	4,202
John M. French	1,500—23,298 by 10 Distillers.
R. M. Morse & Co.	1,558
Merriam & Perry	1,287—2,845 by 2 Grocers.

Total 31,143, equal to 283 puncheons of 110 gallons each.

Norfolk, Plymouth, and Bristol.

Ezra Trull	956
Luther Felton	9,590
A. & J. Felton, for Bristol, Norfolk and Plymouth:	32,000—42,546.

Total 167,545 gallons.

Before the foregoing protest was presented, the following proceeings occurred :—

Objections to the rule of the Committee, excluding evidence against the Law.

At the meeting of the Committee, on Tuesday afternoon, February 5, the Chairman, Mr. Walcot, stated that the Committee had met to hear the counsel for the memorial of Jonathan Philips, and others, against the repeal of the law.

Franklinn Dexter, Esq., Counsel for the Memorial of Harrison Gray Otis, and others, rose and said that he was not present at the last hearing, when the testimony on the part of the memorialists, touching the increased sales in several counties where prohibition had been adopted, was excluded by the course of the proceedings, and as he wished precisely to understand the grounds of the objection, he would state to the Committee that the witnesses who had been called, were prepared to show that the spirit sent by them to those counties the past year, went there for consumption as a

*Say 4400. [Corrected by Mr. B.]

beverage, the sales having been made to taverns and retailers. They were prepared to state the particulars so fully, reserving only the names of purchasers, as to place the matter beyond all possible doubt of the only material fact, viz: the sale for consumption, and no other purpose, and he submitted to the Committee whether the memorialists should be permitted to offer this

Mr. Walcot, the Chairman, said that the Committee had agreed on the form of oath, which was, to tell the whole truth, and it was for the witnesses to say whether they would take the oath. It was not suggested at the former hearing, that the occupations of the purchasers would be given, to prove the destination of the liquor. This, however, would not relieve the witness, on the cross-examination, from answering a call to disclose the names of the purchasers.

Mr. Dexter.—I think it is fair that the witnesses should have the opinion of the Committee, as well as of the Chairman, on the suggestion now made. I shall advise them to take the oath, reserving the right to withhold names, should they be called for. We will offer a witness to test the question, whether the Committee will receive his testimony and excuse him from answering a call for names.

The Chairman.—That question was raised by the Counsel for the Memorialists at the last sitting, and was settled by the Committee.

Mr. Dexter.—Then I understand the rule is to be enforced, that the witnesses shall not be permitted to give evidence of the sale and destination, and use, unless they will give the names of purchasers.

The Chairman.—That is not the decision. It was that the witnesses could not be excused from giving the names, if required on cross-examination.

Mr. Dexter.—I now propose that the witnesses be called to state that these sales were made to taverners and retailers, and submit to the Committee whether this testimony is not conclusive to establish the fact, without requiring the names.

Mr. Sprague, (Counsel for Remonstrants)—The Committee have decided this question, as the gentleman must well know, and on broad principles, which no tribunal on earth, that wishes to get truth, can depart from. They now offer to show the article was sent to retailers and taverners, but how can we know that they are such, unless their names are given? We know not what witnesses may state, unless we can require a disclosure of all the facts, to have an opportunity to disprove them. The witnesses may state that they are taverners and retailers, when they are not so.

Mr. Dexter.—I have but one remark to make on that intimation, and that is, I do not believe that when the witnesses we call, stand up here and state the facts on their oath, an individual in the community will doubt their testimony, except the opposite counsel.

The Chairman.—The Committee have no power to summon witnesses before them. They have agreed upon the form of oath to be administered, and unless the witness will take the oath and come under the rule, he cannot be examined. If any one of the Committee wishes a reconsideration, the rule can be reconsidered.

Mr. Dexter.—That is not what is asked of the Committee. I ask for a direct decision from the Committee itself, whether the witness cannot be admitted to be examined, he reserving his right to the limitation as to giving the names of individuals.

The Chairman.—The Committee have decided that question, and it cannot be again presented, but upon reconsideration.

Mr. Dexter.—I am sensible that any farther remarks from me would be useless. It is then the determination to exclude the testimony.

Mr. Lincoln understood the rule to be to admit and not to exclude testimony. They were not called on to make an absolute rule. If a witness was willing to testify, he should tell the whole truth.

The Chairman called for the hearing of the Remonstrance of Jonathan Phillips and others, and asked—Has the other side any further facts to offer?

Mr. Dexter.—I mean to be understood; and to bring the matter to an issue, I will offer a witness, and advise him to take oath, and not give the names of individuals.

The Chairman.—If there are any witnesses, we are ready to hear them.

Mr. Moses Williams presented himself, and stated that he had taken the oath before the rule laid down by the Committee, requiring the names of customers, had been adopted. He had supposed that the Committee would be desirous of receiving such information as might be properly communicated. He held in his hand an extract from his books, which showed each item and date, and the individual to whom it went, taken off by himself, and checked by his clerk to-day. He had sent it on orders of four persons, and he was willing to state the occupation and every particular, but the name.

Mr. Dexter.—I now ask if the Committee will permit the examination to be made, if the witness reserves his right not to answer as to the names?

Mr. Lincoln.—He is sworn, and he may proceed to testify.

Mr. Dexter.—Then we will proceed to examine him.

Mr. Upton, of Nantucket—It is the same thing over again. The Committee have once decided, and this is trifling with the Committee.

Mr Sprague, (Counsel for Remonstrants.)—If a witness comes before a tribunal and refuses to answer any question put, it is a contempt, and if the Committee let this witness go on, it is in contempt of them.

The Chairman.—This is the third time this matter has been brought up, and on three several days, and the Committee have not reversed the first decision of the Chair. The witness is sworn to tell the whole truth, and he must either answer all or none.

Mr. Dexter.—I still do not get the deliberate decision of the Committee, but only that of the Chairman which preoccupied the ground. To get at that question, I will offer a witness who has not been sworn.

The Chairman.—The question is for each witness to answer to his own conscience, whether he will take the oath to tell the whole truth and keep back a part. He must answer as he thinks proper.

Mr. Lincoln.—There is no question before the Committee. The question is for the counsel and not for us. I would not say this is trespassing on our patience, but unless they can bring witnesses who will conform to the rule, I see no use in their being presented at all. If the Counsel wishes to put a witness before us who will refuse to answer, that is for him to decide. It is not now the question how the committee will vindicate its honor, if he refuses to answer. If a witness presents himself and takes the whole oath, he must answer the whole questions.

Mr. Dexter.—I have now accomplished all I wished. I have presented this testimony in two forms, putting it distinctly in the power of the Committee to obtain it, if they wish to be informed on the particular facts bearing upon the question before them. I am now given to understand, though indirectly, that if a witness does not answer a question which he feels bound in honor not to answer, and which is not essential to establish the fact, he will be held in contempt. As I do not choose to subject any witness to be sent to jail, should the Committee suppose they have that power, I must here leave the evidence, regretting that this very important source of information should thus be cut off.

[Mr. Hallett, then presented and read the Protest against this rule.

Tuesday, February 5th.

Nathan Crosby, Esq. opened the objections to the repeal of the Act, on the part of the Remonstrance of Jonathan Philips and others, and occupied that day's sitting. He closed his remarks on the 6th, and was followed by John A. Bolles, Esq., who also opened on the same side of the question. Mr. Bolles spoke five hours, and finished on the 8th of February. [The Committee have no full report of these speeches, and as a sketch of them might do injustice to the parties, they prefer to leave their publication to the friends of the Law, designing on their part to present their own side of the question, and the evidence on both sides, fully and fairly, and not to prejudice the other side by attempting what may be considered a partial representation.]

TESTIMONY FOR THE REMONSTRANCE.

February 9th. The Remonstrants offered their testimony, and began with Joseph Kingsbury of Amesbury. He stated that he had resided in Amesbury and Salisbury village fifteen years. When he first resided there, every grocer retailed ardent spirits—almost every man in the place drank it—and there was much drunkenness in the village. When afterwards license were witheld, the grocers, with two or three exceptions, continued the traffic as before. Prosecutions were then commenced—a number of persons were convicted, and a stop was thus put to violations of the law. At this time Temperance lectures were delivered, showing the immorality of the trafic—and the retailers made a proposition to the Temperance society, that if the society would take their ardent spirits off their hands, they would purchase no further supply. This was done, and the effect had been most beneficial—the consumption has been reduced at least seven eighths—and drunkenness was seldom witnessed in that village.

Being asked how much was owing to moral suasion in his town; he said we had a temperance lecture and the force of it was so strong the dealers came forward and said, if the temperance society would take the liquors off their hands they would not sell, and we did so. [It did not appear what the society did with the liquor so purchased.] Should Parker, who kept the tavern, gave up the sale voluntarily—witness does not know of any place where it was now sold in Amesbury.

[Two Merchants of Boston were present in the hall, who stated to some of the Memorialists that they had sold spirits to go to Amesbury within a few days, and had constant customers there. Testimony of this kind, had, however, been excluded by the ruling of the Committee, unless names were given to lead to prosecutions.]

Friday, February 10.

Rev. Mr. Perry of Bradford, Essex County, called for the Remonstrants. For four years past, Licenses of Shops had been withheld in Essex County, and Tavern Licenses had decreased. The general impression of the temperate men was, that it had been beneficial. Some of the stores had continued to sell after 1834, but for three years very little ardent spirits had been sold, as he supposed, unless covertly. Wines were sold as usual. Comparing the four years past to the four preceeding, he should think the sales of liquors one third less. He had been over the County as a temperance agent, his parish having relinquished his services for that purpose. He supposed there might be some places where it was now freely sold, particularly the taverns. What he had said of Bradford he thought might be generally true of the County, except some few towns. There was a floating population, who if they could not get ardent spirits in one town, would move to another. There had been no change in the use of spirits since the law of 1838, to make it a subject of remark. So far as regarded the poor, there had been no essential change in Bradford the past eight years.

Cross-examined. Moral means had been used to a great extent. He had preached to his congregation that it was immoral to sell or use it. Being asked if his parish had taken a deep interest in the moral cause of temperance! he did not think they had, which he qualified by saying, as much as he wished. But admitted they paid his salary and supplied his pulpit to allow him to act as a temperance agent. He had no means of knowing whether it was sold in Bradford. He did not go into back places, or visit taverns, and did not suppose that they would show him the places, if there were any, it was sold in covertly. They sent into other places and got fifteen gallons at a time, if they wanted it. One person, Merrill, had been prosecuted within two or three years. Before that, two-thirds of the prosecutions had been got up by the drinkers. The temperance society had never prosecuted. He had always dissuaded them from it. On being pressed, he says the society rely more on moral means than law to advance the temperance reform. Thinks that a strong minority might present obstacles to enforcing the law, but he wanted law to aid the temperance cause. It was no security for one town, if it was sold in another.

Samuel Wells, of Northampton, is clerk of the Court. The County Commissioners of Hampshire had withheld licenses from shops for three years. They licensed taverns. Should think the consumption had diminished. In 1827, 35,000 gallons were sold annually in the County. In 1831 it was reduced to 5000 gallons, and had probably decreased since.—He could not state the amount. It had been gradually decreasing. The tavern licenses in the County had diminished 100 in twenty years. Thinks there were about 40 retail shops when licenses were withheld. The criminal prosecutions before him were from 25 to 40 a year, and nine-tenths were owing to intemperance. The decrease of consumption, within six years, he should think was one third. Six distilleries had been discontinued, and he did not know of but one in the County.

Cross-Examined. How much of what you have stated as to the amount sold or consumed, do you personally know to be true?

On my own personal knowledge?

Yes. Not what you guess, but what you know. State on your oath.

I say on my oath I know nothing about it.

Did you not undertake to give, on your oath, the precise amount of sales in 1827 and in 1831?

That was from others. I was so informed.

By whom?

By an agent of the temperance society, who went through the County, and collected the facts.

Do you give that as evidence?

I stated what I supposed was the fact.

Being further questioned, he says that the distilleries were discontinued voluntarily. Two in Granby were grain distilleries, the others were cider stills. Great moral efforts had been used—preaching, pledges, tracts, lecturers to go through the County, &c. There were seven or eight licensed taverns in Northampton. Drunkenness had diminished. He would not say that forty inhabitants of Northampton were tried for crimes annually. Being asked if it was possible that in the moral community of Northampton, 36 of its inhabitants annually committed crimes from drunkenness, witness admits that some are foreigners, perhaps ten or twelve. Being asked if these cases had increased or diminished the last year, he says that there were forty the last year, which is the highest number he remembers. Before the recent law, there was no excitement against the temperance movements. There had been a great deal of excitement under the law, among the sellers and drinkers.

Were no others opposed to the law? No, but some thought it impolitic.

Were those who thought the law impolitic in favor of it? No.

Then were they not opposed to it? Yes, but it was on account of its injuring the party.

Which party? Both parties.

Did these persons think it impolitic because it would injure both parties? Witness did not answer, and the inquiry was dropped.

By *Mr. Crosby*. Did you ever know the distillers and dealers to exert a moral influence in dissuading their customers from drinking? No.

By *Mr. Hallett*. Did you ever know a temperance *agent* to dissuade temperance societies from employing and paying him in his occupation?

Witness. If it is a proper question I will answer it.

The Chairman. The pertinency of the question is not perceived.

Mr. Hallett. I merely asked it to answer the question put on the other side. It seems equally pertinent.

Mr. Crosby. I asked the question because the gentlemen distillers and dealers in this memorial, claim to be the friends of temperance.

Mr. Hallett. And I asked the question because the gentlemen temperance *agents* in this remonstance claim to be purely disinterested.

Col. Minot Thayer of Braintree, gave an interresting statement of the progress of temperance in that town, which he attributed partly to moral influence, and partly to the law. He could only state what had been told to him. Has not seen a person intoxicated in the town for two years. Formerly, a farmer gave his workmen a gallon a day. Now gave none. They have but three male paupers in the town. Related a melancholy accident, some years ago, of an outrage upon a dwelling, and its sick owner being killed by a stone, thrown by a drunken party of young men. The town of Braintree was a highly moral town, and he believed was so when they sold rum, but had improved. He employed two laborers, formerly intemperate, who begged him to support the law. He did not know that the Weymouth packet sold rum there last winter. In answer to a question from Mr. Buckingham, he said they sold wine there, but he did not cal

wine spirits. If, said he, I came into your store and asked for spirits you would not give me wine. Mr. B. replied that he would get neither in his store, for he kept none.

Col. T. believed that the people in his town were united in support of the law. Being asked if there was not some opposition to it, he thought there was, but none of any consequence, though it might have something to do with the election. Before the law, temperance was going on well there, and he did not think it less so since. Being asked what his majority was in the town, he said it was so large he could not remember.

[It was afterwards understood that the Col's. majority was only four! against an opponent of the Law.]

Sherman Leland, Judge of Probate, of Roxbury, Norfolk County, was called, and went into an argument and narrative.

He described the process of subduing the dealers in that place, commenced about two years ago. The Temperance Society appointed a committee to prosecute. They warned the dealers, who, nevertheless, continued to sell, then they were prosecuted. There was great excitement. The dealers agreed to stop, but began again, and were again prosecuted. Excitement ran high, and a town meeting was called. The state of feeling was such, the agents of the Society thought it prudent to suspend operations. They let them go on, till the fines amounted to four or five hundred dollars in each case, and then took them into Court. Some plead guilty, and some were convicted. The dealers agreed to compromise, and were let off on paying $100 each, and the remainder of the fines was kept hanging over them for their good behavior. Most of the principal dealers in large and respectable taverns were broken up, and by this process, in eighteen months, the principal dealers were entirely subdued. When the elections of County Commissioners came on, the prosecution relaxed, and the trade began again. There was always an increase of drinking in the excitement of an election, when they hoped to bring about a change. The Commissioners opposed to licensing had a majority of 62 in Roxbury. Six prosecutions were then commenced, and the trade appears now to be essentially broken up. Should think very little was sold in the town now. Some moral means were used, but the law was put in force stifly, and order and quiet were restored. He did not see as many red faces congregated together, as he used to. However under the name of wine, they still get spirits. One or two grocers also sell liquors. It was not possible to prohibit spirits where wine is allowed to be sold. The way to convict the dealers was to take them before they could see their customers, and they would generally plead guilty. If you bring them up before Court, nine out of ten of their customers would swear to what was not true. The great difficulty of enforcing the law was the timidity of its friends. They were afraid to prosecute. He had no doubt that rum was sold in some of the towns, and that what a witness (Mr. Baker) had said of Milton was true. The dealers there had not been subdued, especially at the Railway House. You could not subdue them with $20 fines but must get an accumulation of fines. It had increased the costs against the Commonwealth, but it was the best course. He supposed he knew about how it stood in all the towns in Norfolk County. Roxbury he had described.—Brookline, no sale. Dorchester, some in the South Parish. Milton, pretty free. Quincy, a free trade. Braintree and Weymouth, none. Cohasset, a little, Randolph, a little. Canton, too much. Foxborough, an example for any town. Wrentham, Walpole, and Franklin, none. Dedham, a little. Bellingham, considerable. When you produce an excitement by attempting to enforce a law, they will drink more, until they are subdued. You may carry temperance to a certain point, and then you want the law. As to Boston, he

thought it would be very difficult to enforce the law there. It would require very vigorous measures. If the friends of the law would combine, in every Ward, and prosecute every offender, as they had done in Norfolk, till the fines run up to a large sum, he thought they might be subdued in time. If it was left to the city authorities, it would never be done.

Cross examined.—He was employed by the Temperance Society in these prosecutions, and paid for it. He thought it best to have the relation of of counsel to clients in looking up the prosecutions. The prooceedings he had related took place under the old law.—The new law had not been applied. There was some opposition to it, and they could not elect their representatives. Had to compromise with three for the law and two against it. This was in consequence of the administration party, on the third day bringing up temperance candidates. He corrected himself, and did not mean to say that no temperance men were opposed to the law. There was perhaps more opposition than there had been before this law, but he thought it could be subdued. As to how far religion could be carried, without law, he could not undertake to say. He would not advise to bring in law to enforce it beyond a certain point. What the effect would be on the whole Commonwealth, if the same excitement was kept up for eighteen months, throughout the State as in Roxbury, to subdue the dealers, others must judge, but it would not operate in the small towns, where public sentiment was well settled. Undoubtedly the prosecutions, if the parties stood trial, would lead to a great deal of perjury. He should not rely on the customers if he could help it. Being asked what opinion he had recently expressed concerning the new law, he said, he doubted if it was not premature, and he would modify it, if left to him, so as to regulate the sale of a gallon and upwards, and leave the Counties to decide as to a less quantity He had seen the Rhode Island law just passed, and approved it, and thought our law would be more efficacious if so modified. In fact, said he, you never can make the people tranquil under any law unless you include wine in the prohibition.

Tuesday, February 12.

DR. ABEL L. PIERSON of Salem, was sworn, to show the physical evils of intemperance. [The Memorialists had in no way called this in question, but the Committee deemed it necessary to have it proved.]

Dr. Pierson stated that he had been in medical practice twenty-two years. In answer to the inquiry what is the effect of alcohol on the human system? he replied—That he had practiced among the *poor*, when young, and *they* generally use ardent spirits. A great deal of intoxicating liquor is drank which contains other properties than alcohol. Distillation in copper, causes copper precipitate. He believed that common rum and gin contained other qualities besides alcohol. There was, perhaps, as little of deleterious qualities in New-England rum, as in any spirit. The immediate effect of alcohol on the stomach was inflamation. If its effect be very great, it would extinguish life at a blow. It operates on the blood like electricity. Ascends to the brain and quickens the motion of the heart, making a man "live too fast," as the saying is. It is absorbed by the veins. The heart, under its influences, beats 110,000 times a day. It should never beat but 100,000 times. Apoplexy is caused by the heart driving the blood into the brain, and producing congestion.

The remote effects are, that the stomach becomes habituated to the stimulus, and requires it. Induration is produced, and finally ulceration. A great quantity can be borne, and a person may use it to excess, and retain tolerable health. It is a poison, but a very slow poison, and may be used in proper quantities with impunity. Men may use poison without serious injury. Dropsy is a common case in drunkards.

As to the effect on the senses. Insanity and intemperance act on each other. Intemperance affects the hearing. Perhaps you (to Mr. Crosby) may not have experienced the effect, but it produces a sensation, like water wheels turning. It affects the sight, so that a man may see double. Has a tendency to prevent cure of diseases, and to aggravate them. The only way to guard men against it, is to *protect them from themselves.* When a man is found frozen to death, there is always an empty bottle by his side. Have seen many diseases that he traced to the use of alcohol.

As to its medicinal qualities—To a healthy man he should say, avoid all intoxicating drinks; but if out of health, it may be useful as a medicine. In this country, the article was much less adulterated than in Europe. Here it was honest alcohol. In Europe, it is drugged to increase stimulus. Reads from the Domestic Chemist as to drugs in English ardents. It was a mistake that ardent stimulus aided labor, or relieved fatigue. It causes a man to do more for a brief period, but at the expense of his constitution. Alcohol was beneficial as medicine, but a person in health should avoid all intoxicating liquors.

Cross-examined by Mr. Hallett. Were not the physical effects of luxury and gluttony in eating highly deleterious? *Ans.* Unquestionably they were, and often led to aggravated diseases.

Ques. Can men be morally persuaded not to eat to excess? *Ans.* Not in all cases.

Ques. Would you recommend a law that should enforce such a diet as physicians would prescribe to be safe and healthy? *Ans.* Such a law would be perfectly proper in many cases. If a shell fish should be found in great abundance on our shores, of a delicious flavor, but which produced a poisonous effect on the system, prostrating the body and mind, and producing disease, misery and death—and the people were so infatuated that they would not be *persuaded* to forego partaking of this poisonous food, he thought it would not only be proper, but the duty of the Legislature, to pass penal acts to restrain persons from destroying in this way, themselves and their families.

Ques. You think then, the people are not to be trusted with the regulation of their own appetite for food as well as for drink; but would you in the case supposed, have a law that the rich might use fifteen bushels of the shell fish, but the poor not have a less quantity, if they could buy it? *Ans.* He would prohibit it altogether. Whatever was clearly proved to be injurious, he would prohibit by legislation!

Ques. Would it be physically possible for a man to live till seventy or eighty, in the habitual, constant use of such a poison as you describe alcohol to be? *Ans.* I have stated that it is a slow poison, and that a man might accustom himself to the use of positive poison.

Ques. But Doctor, how is it that the medical faculty never discovered the physical effects you have described, until recently? *Ans.* He could assign no reason, if they had not, unless it was that modern medical science had progressed farther.

Ques. In dissections, would not the indications of poison in the stomach appear in the subject who died from poison. *Ans.* Undoubtedly. The presence of such an agent would be indicated.

Ques. Has not medical science for the last thirty years, been competent to detect poison in the stomach? *Ans.* It has.

Ques. Will you then, explain why the most celebrated anatomical professors never detected the poison of ardent spirits in the stomach, till within a dozen years? *Ans.* He could not, if such were the fact, but he presumed it had been detected.

Ques. Can you name any case in which the medical faculty, previous to 1827, discovered in their dissections the evidences of poison you have described, arising from alcohol? *Ans.* He could not; their attention was not called to it.

Ques. Then does not the preconceived desire to find these results, aid in their discovery? *Ans.* He was not aware that it did, but he presumed that anatomists had made the discovery long ago, though it had not been minutely developed.

Ques. Was not, in fact, Dr. Rush of Philadelphia, the first physician who represented the moderate, habitual use of ardent spirits as unnecessary and injurious? *Ans.* No; he considered Hypocrates as the first discoverer of the fact. It was as old as medicine.

Ques. Can you refer to any authority to establish that assertion. *Ans.* He was not prepared to, on the instant.

Ques. Were you acquainted with Dr. Hollyoke, of Salem? *Ans.* I was, and well knew his habits.

Ques. How long did he live, and did he not habitually use ardent spirits temperately? *Ans.* He used ardent spirits in small quantities habitually, a table spoonfull at a time, diluted with water, and sometimes with cider. He also used tobacco habitually. He lived to be over 100 years, but let it be remembered that Dr. Hollyoke did not die of old age! On a post mortem examination it appeared that the heart was in a healthy state, and might, from all which its appearance indicated, have beat another hundred years. But the immediate cause of his death was an affection, perhaps the only one, which might have been induced by a moderate, but habitual use of ardent spirits—a cancer in his stomach. He then described the schirrus stomach, which he said was attributable to the effects of alcohol*.

Ques. Are not the same indications found in the stomach, as the effects of tight lacing? *Ans.* He did not consider lacing as decidedly injurious to the system.

Ques. Are not tea and coffee injurious to the system? Witness believed they were, and objected to their use as a beverage.

By Mr. Stowell, one of the committee. How much longer might Dr. Hollyoke have lived, if he had not used ardent spirits? *Ans.* That is a difficult question to answer.

Dr. Pierson thought that alcohol, although useful as a medicine, in some cases—could be excluded from the materia medica, if the good of the community required it.

Dr. Walter Channing of Boston, called to the same point. He said that Dr. Pierson had left very little for him to say. Dr. C. then made an earnest address to the Committee in behalf of temperance. Related the cases of four distillers: one of whom never drank any, and described the effects of alcohol upon the stomach.. Read extracts from Sir John Ross' Journal of his voyage to the north pole, stating that he brought home all the rum he carried, having persuaded the sailors that they could stand the cold best without its use. They abandoned its use voluntarily, without compulsion.

On the cross examination Dr. C. was asked whether, on the whole, the habitual use of ardent spirits shortened life in a community? He believed it did.

Question by Mr. Hallett. What was the comparative use of alcohol

*Note. Dr. Bowditch died of the same disease. Is his memory to be aspersed by intemperate zeal? His biographer, Rev. Mr. Young, says: "The disease of which Dr. Bowditch died, was found by a post morten examination to be a *schirrus in the stomach* a disease of the same type with that which caused the death of Napoleon."

now, and during the period of the Revolution? He could not tell precisely, but presumed it was greater in the former period than now.

Question by the same. What was the comparative state of longevity then and now? He could not tell.

Q. Was not the average life of man in the former period longer than it is now?

Ans. Perhaps it might have been. He had no data to make a comparison.

Q. But do people generally live to as great an age now as the generations of men, sixty or seventy years ago?

Ans. Others could judge as well as he could of that.

Mr. Hallett then gave a list of the ages of the signers of the Declaration of Independence, and inquired if an equal long vity could be calculated on the present race of men? The Dr. was not prepared to answer the question fully, but thought probably not. Could not say positively. He thought the men of the Revolution had something more important to think of than ardent spirits.

Q. Was not the ages of the surviving soldiers of the Revolution, the pensioners, much greater, relatively, than could be calculated on the lives of men of the present day, under the temperance reform?

Ans. Could not answer positively. He was aware that the Revolutionary pensioners had generally survived to a great age, but he did not attribute it to the use of ardent spirits.

Mr. H. Neither do I. That is not the inquiry, but how you can philosophically reconcile their great age, and known habits of constantly drinking spirits, with the theory that the habitual use of spirits shortens life, and total abstinence lengthens it?

Dr. C., was not aware that they drank spirits to excess.

Mr. H. That is not to the point Doctor. We are on the effects of habitual use upon life, compared with total abstinence. Is it not notorious that the men of the Revolution used ardents constantly in the army, and regarded them as a necessary of life?

Dr. C. It might have been so, but he was not aware of it, and did not fully comprehend the object of the inquiry.

Mr. H. Did you never read in Sparks's Lives, that in a severe battle General Putnam, who was almost perforated with bullets, complained most of all, that a shot had passed through his canteen and spilt all his rum, which he regretted more than the loss of blood?

Dr. C. That fact had never fallen under his observation. He was desirous of fully answering every enquiry which he could comprehend.

Mr. H. The object of the inquiry then is this—to arrive at the fact whether luxury, idleness and effeminacy in the present race of men have not tended to shorten life much more than the use of ardent spirits did in the men of the Revolution?

Dr. C. The causes named undoubtedly had that tendency, but he could make no comparison between the two supposed cases.

Mr. H. But if you justify this law, because intemperance affects life and health, would you not then restrain luxury and high living, by force laws, as well as the sale and use of ardent spirits?

Dr. C. That was a matter for the wisdom of the Legislature.

Mr. H. Is not the practice of tight lacing and slight dressing among females, a great source of consumption and other diseases, and the shortening of life?

Dr. C., did not perceive the bearing of the question. Undoubtedly such was the fact, however.

Mr. H. Then why not restrain these practices in females, by law, in

order to save them from themselves, as Dr. Peirson said must be done with men, in regard to alcohol?

Dr. Channing. Gentlemen—I have no wish to press this law. I do not give any opinion upon it. I have only spoken of the evils of intemperance, and these I know to be so great it is impossible to exagerate them. You sir, (to Mr. H.,) know them, and have often described them better than I can.

Mr. H. We do not differ materially, Dr. Channing, as to the *evil*, but the question now is the *remedy*. The effect of this *law*, not the effects of *alcohol*.

Mr. H. Does the habitual use of alcohol create a powerful thirst for the liquid that contains it?

Dr. C Undoubtedly.

Mr. H. Is it stronger than the natural thirst?

Dr. C. Unquestionably it is.

Mr. H. Which is the strongest appetite in man, hunger or thirst—and which is the most excruciating and will soonest terminate life?

Dr. C. Thirst, undoubtedly.

Mr. H. Then if hunger will break through a stone wall, what will thirst for ardent spirits do?

Dr. C. Of that you must judge.

Mr. H. Which would most promote thirst, a vegetable or a meat diet?

Dr. C. A meat diet.

Mr. H. Then would it not promote temperance to enjoin by law a vegetable diet under the Graham reform, in order to diminish thirst?

Dr. C. It is not my province to decide.

Mr. H. Is alcohol in wine the same as alcohol in ardent spirits?

Dr. C. That is a question not fully settled.

Mr. H. From your intercourse with those who are sometimes called the higher classes, what effect do you find this law has in restraining their appetites?

Ans. It was impossible for him to say. Some thought it would have a good effect. He gave no opinion as to the law?

Mr. H. Is there not a disease in medicine known as mental extravagance; the effects of strong representations upon the imagination, called, in the medical books, *morbid afflatus?*

Dr. C. Such diseases were laid down in medical books. He did not perceive the bearing.

Mr. H. May not this mental disease in temperance societies, be the origin of this very law, rather than a sober desire to do good?

The Chairman did not perceive that this question required answer.

Mr. H. Doctor, will you please state, as a medical man, what would be the tendency on the *imagination*, in contemplating a *single subject* as the *source of all evil*, and collecting and dwelling on extravagant pictures of those evils.

Dr. C. It was not a subject on which he had reflected much. He was not now prepared to give an opinion, if it were required of him.

Mr. H. Is it not laid down in your books that the effect would be to produce a *monomania;* that is a *false* reasoning on *one* subject which may completely overcome the operation of the judgment in that particular, though sound in others?

Dr. C. Had not seen it so stated. It might be so.

Mr. H. Are not Doctors Irvin, Cutter, and Good, acknowledged medical authorities?

Dr. C. Unquestionably.

Mr. H. They so state the case very distinctly. My object in the inquiry is to apply it to the monomania that has got up this law. Mr. H. apologized to Dr. C. for detaining him so long, and thanked him for his candor and patience in the examination, and the Committee adjourned.

Wednesday, Feb. 13.

Dr. Ebenezer Alden of Randolph, was called to the same point. He stated that he was present at the examination of Drs. Pierson and Channing, yesterday afternoon, and concurred in the general views expressed by those gentlemen in relation to the effects of alcohol on the system. He said there appeared to be an hereditary predisposition in some individuals to intemperance—and that the children of intemperate parents, whether from this cause or the force of example, frequently became intemperate themselves. It was often the case that if a person should nearly succeed in overcoming a habit of intemperance, the sight of a dram-shop and exhibition of the decanters, would cause a renewal of the habit. He believed that the use of ardent spirits as a drink, was always pernicious—and had been the cause of much loss of life throughout the country. It was rightly called a poison *because* it intoxicates. It is a diffusable stimulus, and is never necessary in health.

He said that in an address delivered in 1789 or 1790, by Dr. Benjamin Rush, before a meeting of clergymen, he said that ministers should preach not against the abuse, but against the use of ardent spirit—it being never necessary to health—and in cases of illness, it had better be applied externally than internally.

Dr. A. stated that licenses had been withheld in Randolph about four years—and since that time the diminution in the consumption of ardent spirit was very great indeed in his view. There were, previous to that time, eleven licensed retailers and three taverns—the population being 3300. Now there is only one tavern. There were formerly many cases of *delirium tremens*—but now that disease is seldom met with there. The amount of drunkenness is much less than it was a few years ago. He thought that restriction was an important means in bringing about this result. There was a great visible change in the external appearance of the place. Rum was still used in the town, but chiefly by foreigners, and in comparatively small quantities. We have a class of persons who use it and will use it secretly. But it is difficult to conceal it. Rum will out, although those who drink it *will lie!*

Cross-examined, by Mr. H. What are your means of knowing the diminution of the use of spirits in Randolph? *Ans.* From his intercourse with the people and visiting his patients.

Ques. Is not the disuse in families the chief cause of the diminution? *Ans.* It probably was.

Ques. Is not this the result of moral influence and not of law. *Ans.* It was so far as the habits of families were concerned, but the law would be an assistance to the moral cause.

Ques. Are intemperance and pauperism cause and affect? *Ans.* They are very closely allied.

Ques. If there is a diminution in the use of ardent spirits in a town, will pauperism diminish proportionably? *Ans.* Should think it certainly would.

Ques. How is it in Randolph? *Ans.* Believes that pauperism has very much diminished there since licenses were withheld. Has no doubt of it.

Ques. Have you as good means of knowing the state of pauperism there, as you have of knowing that the use of spirits has diminished? *Ans.* Believes he has.

Ques. Should it turn out that pauperism has increased in Randolph, how would it affect your theory? *Ans.* Such a result is not possible.

Ques. On which would you place most reliance, the sworn returns of the Overseers of the Poor, or your own opinion? *Ans.* Undoubtedly the former.

Mr. Hallett then produced the following official returns of *paupers in Randolph*,

Year.	Paupers.	Intemperates.	Expense of Poor.
1835	24	4	$1032
1836	27	2	1354
1837	65	33	1750
1838	92	61	1833

Ques. Do these facts from official returns, support your theory Dr.? Witness said he could not account for them if correct. He must say he was puzzled at such a result, if fairly stated.

Mr. H. You have your own Overseers' words for it. It may serve to show that you have been too confident in your own opinions of the matter.

The opposite counsel complained that the witness was unfairly pressed, and the examination closed.

Thomas Bradley, of Tisbury, on Martha's Vineyard, a member of the House, sworn. Thinks the withholding licenses in Dukes County has diminished the use of ardent spirits. In 1830, there were 3000 gallons of ardent spirits used annually in this town. Thinks now there is not over 300. The pauperism has remained about the same since 1831, when licensing was stopped. Being cross questioned as to the facilities of getting it to the Island, says it can easily be brought there in vessels and boats, or got from those that stop in the harbors, but the reason it is not used, the people do not want it as they used to. Is in favor of the law, but does not think it will make any difference there.

Being asked if there are no sales there now, and whether it is not obtained by those who want it; says they have one place for the old topers, where they can get it.

Ques. Then you think it necessary to have a safety valve kept open? *Ans.* I do.

Wilkes Wood of Middleborough, Plymouth County, Judge of Probate. No persons are licensed in Plymouth County. As to the comparative use since the suppression of licenses he cannot tell. Habits have changed. There is not half as much consumed now as formerly. Tavern keepers frequently violate the law. Thinks there is less intoxication than formerly. There are in our village individuals who think it no disgrace to get drunk.

Cross-examined. Are ardent spirits less used in private families than formerly? Yes, generally discontinued. *Q.* Is that the effect of law or moral influence? Doubtless the latter.

Q. Is not the discontinuance of this practice the great cause of the diminution in use? Probably it is.

Questions by Mr. Hallett. Is there any law to prevent using spirits or wines at public dinners? *Ans.* I never heard of any.

Ques. You say that some people in your town, consider it no disgrace to get drunk. Do you not know that the last 4th of July 400 persons held a political celebration in Middleborough, and dined without wines or ardents? *Ans.* I understood so, and have no doubt of it, but was not present.

Ques. Do you know who delivered the oration on that occasion? *Ans.* I understand you did.

Ques. Do you attribute that to moral influence or to this law? *Ans.* You must judge for yourself.

Ques. Does it not show the extent of voluntary temperance in your town? *Ans.* I think it does.

Being asked, by the remonstrants, what had been the effect upon pauperism in his town, witness says—

Formerly there were from 50 to 60 paupers. Now the number is from 20 to 30. Within 12 years the number has diminished about one half. Thinks there were formerly double the number of paupers from intemperance that there are now.

Mr. Hallett. What has been the result as to pauperism since this law took effect? *Ans.* Cannot tell, should suppose pauperism must have diminished.

Mr. H. Judge Wood, do you speak from personal knowledge or from conjecture?

Ans. I have no positive knowledge, but presume it is so from my general understanding of the case.

Mr. H. You say there was more intemperate pauperism formerly than now. But here are the statistics, sworn to by the Overseers of the Poor of Middleborough. Mr. H. then read the following figures from the official pauper returns.

Middleborough in 1835 had 52 paupers, of whom 11 were intemperates. In 1836, 45 paupers and 8 intemperates. In 1837, 49 paupers and 17 intemperates. In 1838 56 paupers and EIGHTEEN intemperates! The expenses of supporting the poor were in 1835, $1078. In 1836, $1071. In 1839, $1254. In 1838, $1300. Showing an increase of paupers, intemperates, and expenses under the prohibitory law since 1834.

JOSIAH BACON, of Sandwich, a member of the House, was sworn and testified. It was six years since licenses had been granted in Sandwich. Withholding licenses had been beneficial. No spirits were used there now but by those who *are beyond moral means*. Does not know of any spirits being sold there now. None was sold openly. There were two taverns. Did not visit them and did not know if they sold.

On cross examination, says—there has been a decided effort to exclude ardent spirits from Sandwich.

Ques. Had it succeeded, was none brought there last year? *Ans.* There were two importations in the Spring and Fall, 25 barrels in the Spring and 41 in the Fall.

Ques. Was there any law to prevent sending rum to Sandwich in barrels? *Ans.* Not as he knew of.

Ques. Then what do you rely upon to prevent the use of the article, if you cannot stop its introduction? Pause.

Ques. Must you not rely on moral influences? *Ans.* Yes. But the dealers in Boston would trust men with rum when they would trust them with nothing else. Witness saw several barrels of the rum brought from Boston, in a store in Sandwich, and asked the man why he did not buy flour, &c. His answer was that he could not get these articles on credit. He said they would trust him for rum when they would for nothing else.

Mr. H. Does not that fact prove that it is easier to get rum to sell than any thing else, and yet you expect to stop it by law? *Ans.* It might be so.

Mr. H. You say that no spirits are used there now, but by those beyond moral means, and yet 66 barrels, which is 2640 gallons, were sent there last year, as *you* know? What proportion would that give to your inhabitants? Witness had not made any estimate.

Mr. H. Would it not not be over half a gallon to every man, woman,

and child in your town? *Ans.* It would, compared to the population.*

Mr. H. How then, has withholding licenses helped you? *Ans.* I consider the law auxiliary to moral influences.

Mr. H. Do you mean to say that all your fellow citizens who used that rum are outcasts beyond moral influences? *Ans.* I did not mean to be so understood.

Mr. H. You said so.

Mr. H. Would you be in favor of this law if it permits wine to be retailed by every body? *Ans.* I should not. The sale of wine would be very injurious if the new law does not prohibit it.

Mr. H. What is the effect in your town, upon pauperism compared with former years? *Ans.* Do not think the expense of paupers has been diminished in three years. In Barnstable County the proportion of paupers is to the inhabitants as 1 to 101. Plymouth, 1 to 73. Suffolk 1 to 25. Essex, 1 to 38.

Mr. H. Have you gained any thing in pauperism, in Sandwich, by force laws? *Ans.* Have no means of stating the facts.

Mr. H. then showed the statistics of Sandwich, as follows. In 1835, 18 paupers, 3 intemperates. In 1836,22 paupers,5 intemperates. In 1837, 28 paupers, 6 intemperate. In 1838, 48 paupers, SEVENTEEN intemperates.

Mr, H. I will ask you one question Mr. Bacon, to prove that ardent spirits are not necessary to sustain labor, which the other side have not shown. You are an agent in the Glass House, at Sandwich. Which workmen best stand the heat of the furnaces, those who drink spirits or water? *Ans.* He had taken some pains to ascertain that fact, and there was no question that a glass blower could do much more work, and stand it longer on water than any other drink.

Mr. SPOFFORD of Beverly sworn.

What has been the effect of withholding licenses in Beverly. Very great.

How many places were there where ardent spirits were sold.

Does not know exactly, twenty or thirty.

Has the consumption of ardent spirits diminished in Beverly? Yes, very materially.

Has pauperism diminished within the last year?

It has increased. Many paupers have been thrown upon the town from other places.

During the last year, has the use of ardent spirits increased or diminished?

Diminished. During the last four years there were nine commitments to the alms-house. During the previous four years there were twenty.

Mr. CLAPP of Dorchester, sworn.

Are paupers in Dorchester supplied with ardent spirits?

No. They formerly were.

How many licenses were formerly granted in the town?

Believes seven or eight.

What has been the increase or diminution of pauperism in the town within the last few years?

Believes there is little, if any, variation. Thinks there are two or three less paupers than there were a few years since.

What proportion of the paupers become so by intemperance?

Two thirds to three quarters. Till the year 1836 rum was bought by the hogshead for the use of the paupers. Since that time its use has

*[NOTE. The population in 1830 was 3,367. This would give over five pints.]

been discontinued, except in the year 1836, when the overseers bought one barrel, which they furnished them *to taper off with.*

Do the paupers ever get ardent spirits?

Sometimes a jug is found, which the keeper *cracks.* Thinks but very little is used by them.

Which is the most effectual in preventing drunkenness, the law or moral suasion?

Thinks moral suasion will have little or no effect on the drunkard.

Being asked how men can be effectually kept from rum who hanker after it? Says it could only be done by shutting them all up and having a high wall, and then they would get it somehow.

Mr. H. here remarked that Dorchester was one of the towns of Norfolk, represented by Judge Leland as a rum town, where it was sold pretty freely. But that town had *improved* as to its pauperism. In 1837, it had 55 paupers, and 37 intemperates. In 1838, 45 paupers and 30 intemperates.

Thursday, Feb. 14.

Mr. Bliss moved that it is inexpedient to hear any more evidence as to the evils of intemperance.

Mr. Crosby (Agent of the Massachusetts Temperance Union,) hoped the Committee would not adopt that course, to exclude their evidence.

Mr. Bliss. It is for the Committee and not the *Counsel,* to decide this matter. Much time had been spent upon matters about which there was no dispute.

Mr. Bolles wanted to put in evidence as to the effects of intemperance upon man as a social being.

Mr. Hallett said that after his withdrawal on the part of the Memorial of H. G. Otis and others, he had suggested no limit as to the course of the other side, though they had gone into all manner of inquiries. Nor should he now. He had since been retained for the Memorial of Samuel Earle, and 1100 others, for whom he now appeared, and had confined himself to cross questions, in order to bring out the whole truth.

Inquiry was made as to the appearance for other Memorials. Rev. Mr. Whittemore said he appeared with four others in behalf of a Convention of Middlesex County. Rev. Mr. Cobb was also an agent for the same Convention, and wished to be heard. Joseph Harrington, Esq. appeared for the Roxbury Society.

Mr. Bliss's motion then prevailed by a vote of 7 to 3. [Showing only *ten* out of 35 of the Committee present. This was quite the average attendance.]

Mr. Stowell moved to re-consider the above vote, and it was re-considered, and

Moses Grant of Boston was called by remonstrants. Is Chairman of the Committees' on the Houses of Industry, Reformation and Correction. In 1838, 405 males were committed to the House of Correction—190 were common drunkards; 319 females, 152 common drunkards. Of those committed by the Police Court, 19 out of 20 have the delirium tremens. In ten years, 7588 persons had been committed to the House of Correction.

Deacon Grant read at considerable length, statements from a pamphlet of the statistics of the Houses of Correction, Reformation, &c. He had been 30 years connected with these institutions, and should like to relate a few affecting stories, which he did. He said he knew of a case where a man in Lynn had sent his boys to Salem to get ardent spirits. Could get none in Lynn. He spoke feelingly upon the evils of intemperance in society and families, and read several Police Reports from the

Boston Morning Post, particularly one of June 26, 1838, "I'll not march through Coventry, that's flat." Does not know that it is true, but has no doubt of it. He said, our Police reports do trifle with misery and crime. He knew a case of children coming to a Primary School, intoxicated. It was the fault of their parents, not the Instructress. He could not but think that the new law would have a good effect if enforced. As to its oppression upon the poor, he had conversed with drunkards who desire the law to be supported. Many persons came to him to know if the law would stand. They expect more than it will effect.

They did not assist intemperate persons out of the Alms-house. But their families were aided. He had no means of tracing crime and poverty to intemperance, only by general statements and observation. Could not undertake to speak from investigation in each case. The estimates were general. There were more facilities for getting spirits in Suffolk than in any other County, and there ought to be a greater increase of pauperism there than in any other County.

[Statistics, however show less increase, than in most of the prohibiting Counties.]

Rev. Jared Curtis. Has been 13 years Chaplain of the State Prison. In all the inquiries he has made of prisoners, three fourths have stated that they owe their commission of crime to the use of liquor. About one half perhaps, committed crime under the influence of liquor. He does not pretend to be numerically correct, but substantially so. The report of Massachusetts State Prison 1833, shows that out of 119 convicts, 100 say they owe their imprisonment to this *beastly* vice. Report of 1837, out of 313 convicts in the prison, 156 traced their crimes to drink; 19 used none; 104 temperate drinkers; 190 intemperate. Report of 1838—116 admitted. Examined 114; 5 used none; 44 temperate drinkers; 62 intemperate; 59 say, led to crime by drink. Believes the prisoners might be reformed, if it were not for intemperance. Last year a person came back; wished to get into prison again to avoid temptation to drink. On cross-examination, says he was simple, an idiot. He stole a horse to get back.

Cross-examined. There has been an increase of commitments the last year. In 1837, 291. In 1838, 302. The whole class of higher criminals are temperate men. Forgers, burglars, pickpockets, and in crimes that require shrewdness, the convicts are usually total abstinence men. Witness attributes the increase of crime under the new law, to the increased drinking from principle, or opposition to the law.

Being asked his means of tracing crime to intemperance, says he has no other than what the convicts tell him.

Mr. H. Do they not consider it a fair excuse to attribute their crimes to drink? *Ans.* Unquestionably. They are desirous of palliating their crimes by ascribing them to intemperance.

Ques. Are you not liable to be misled from that cause? *Ans.* I think so. They often use it as a palliation.

Ques. Can you tell how much of intemperance is the result of previous crime and disgrace or bad conduct, as well as the reverse? *Ans.* Have no means of arriving at a result.

Ques. But may not crime produce intemperance as often as the reverse, and can you show it does not? *Ans.* Should think it did not, but undoubtedly they are mutual cause and effect.

Ques. You speak of intemperance as a *beastly* vice. Do you know of any beast that habitually injures itself by excessive drinking? *Ans.* I do not.

Mr. H. Then is it not unjust to irrational animals to call drunkenness a *beastly* vice? Mr. C. It had never occurred to him in that light.

Ques. What means do the convicts in prison resort to, to get intoxicating drink? *Ans.* They used to resort to various expedients. It is almost impossible to exclude it, but believe it is done now. Some time ago it was found that they would keep their allowance of molasses and yeast for bread, out of which they brewed stuff that would intoxicate. This was put a stop to.

Rev. Dr. Tuckerman, of Boston, resident minister for the poor, was called to testify as to the effects of intemperance upon social affections. These he described in an eloquent and impressive manner, and with deep sincerity. If the dram shops could be closed he would willingly take care of the poor. Being asked as to the benefit of laws designed to aid temperance among the poor, says—I hardly know how to answer. Moral persuasion will best succeed with the better sort, but there are cases it cannot reach. When I go to a poor man, whose children are in rags and filth, I cannot use moral suasion with him under this hankering thirst.—There are men far beyond the reach of moral influences.

Being asked if any law could restrain the hankering of such men, says only by making the gratification impossible.

Being asked if either law or moral suasion could reform the drunkards, witness says a few are recovered, but very few.

The counsel for remonstrants asked his opinion of the law of '38? *Ans.* I am not willing to hazard a judgment, as to the law. They also asked, would the poor resist the law? *Ans.* I doubt not the poor would readily *submit*. The difficulty would be between the City Government and the sellers. *Ques.* Would it be oppression to deprive the poor of the use of ardent spirits? *Ans.* Oppression! O! no! it would be a mercy.

Cross-examined by Mr. Hallett. Do you mean to say Dr. Tuckerman, that the poor need more restraint upon their appetites than the rich? *Ans.* By no means. I do not wish to be so understood.

Ques. Do you not find more of the virtues of self-denial and patient endurance in the poor than in the rich? *Ans.* Undoubtedly. I freely admit the virtues of the poor.

Ques. Is it not unjust then, to attribute so much of poverty to vice and intemperance, and is not poverty inseparable from society without intemperance? *Ans.* Surely there is a great amount of poverty arising from circumstances in God's providence.

Ques. Then you would not imply that poverty involves crime, but may arise from virtuous misfortune? *Ans.* Unquestionably. I would by no means be understood otherwise.

Ques. You spoke of oppression. Did you mean to say that a law which should deny an indulgence to the poor in proportion to their means, and grant it to the rich, was not an oppressive and unjust law? *Ans.* I do not mean to give any opinion as to the law in question. I only speak of the evils of intemperance which cannot be too deeply deplored.

Mr. H. I only asked the question, Sir, to prevent a wrong inference from your answer to inquiries on the other side. No one who knows your disinterested labors in the cause of humanity, can doubt your sincerity or fail to respect the purity of your motives, as I do.

Ashael Huntington of Salem, District Attorney for the Counties of Essex and Middlesex, called and sworn. No retailer's licenses had been granted in Essex since 1836, except a few retailers of wine. There were great difficulties previous to 1836. There have been prose-

cutions formerly, got up by the drinkers. Now they are got up by the friends of temperance. In Salem there were 32 licenses last year. As to enforcing the law, I am satisfied there will be no difficulty. I think the people are satisfied that it is better that licenses should be withheld. Have had no considerable difficulty in enforcing the former law and apprehend none in this. Have had as practical experiment of enforcing the law in Essex. After licenses were withheld in '36, the friends of temperance determined to enforce the prohibitory law. Indictments were found, the parties would not contend, and were let off on paying costs upon condition they did not offend again. This put a stop to the sale. There were less prosecutions in Essex than in Middlesex, where licenses had been granted. In the latter the fines and prosecutions amounted to $1600; costs to $969. In Essex, fines $375. Costs $1200.

The Court has decided that the new law repealed the old law as to retailers. Whether it does not restrict wine at retail he is not prepared to say. It may be it does not. But he thinks the old law remains as to wine. As to enforcing this law, it can be done wherever there is a general disposition to enforce it. Otherwise it might be difficult. In the first place he relied on those favorable to the law to enforce it, and next upon the trade, who are very kind in furnishing the best evidence. They understand who the customers are, and if one is prosecuted and can't sell, he likes to see others stopped as well as himself, and will furnish the means to do it.

In Salem there were 555 paupers, 500 of them from intemperance. The temperance reform was showing itself in Essex. There was a falling off in Salem lately in prosecutions. The fines now go to the Counties and the costs to the Commonwealth. If the fines were paid to the Commonwealth, the State would make money by the prosecutions. The fines exceed the costs.* Most of the criminal prosecutions arose from ardent spirits. Of 250 criminal prosecutions in Salem in 1836, 85 were common drunkards. Of 30 in 1838, 25 were common drunkards.

Cross-examined. There had been no prosecutions under the law of '38. The prosecutions under the former law were most numerous in Newburyport, probably 60 or 70 dealers. Also in Gloucester, as he understood.

Mr. H. What is the proportion of decrease of pauperism to the decrease of licenses in the towns? *Ans.* The decrease of pauperism must be in proportion to the prohibition of licenses.

Mr. H. Do you know that as a fact? *Ans.* I have no doubt of it.

Mr. H. Can you show it in any town in Essex? *Ans.* I have not the figures. Perhaps in many towns the effect of prohibition has not yet appeared, as it respects pauperism. There has not been time.

Mr. H. Ought it not to appear in three years? *Ans.* Should think it would.

Mr. H. Will you name a town in which this result ought to have appeared by this time? *Ans.* I would take the town of Beverly. The effect should be felt there.

Mr. H. But suppose pauperism has increased there, how would it effect your theory? *Ans.* I presume it will not prove so.

Mr. H. then produced the official returns of Beverly as follows. In 1835, paupers 45, intemperate 23. In 1836, paupers 81, intemperate 30. In 1837, paupers 95, intemperate 71; of whom 16 were foreigners.

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*Upon this hint, the Legislature subsequently passed an act that the fines recovered in all prosecutions, shall be paid into the State Treasury. The county balances, will now fall upon the counties instead of the State Treasury as heretofore.

In 1838, paupers 82, intemperate 61; 3 foreigners. Deducting the foreigners, there were 79 paupers, and 55 intemperates in '37, and 79 paupers and 58 intemperates in '38, showing an actual increase instead of decrease. In 1835 and '36, the pauper expenses in Beverly were $1200. In 1837, $1669. In 1838, $1769.

Mr. Huntington could not explain these results satisfactorily. There must be other causes he thought operating.

[It was also shown by Mr. Hallett, that in Newburyport and Glouces ter where Mr. Huntington testified there was the greatest sale, there had been a decrease in the number of paupers.]

Witness said there had been a decrease of crime in Essex, *full one third within three years.** He did not expect so much from this law as some did. He valued it chiefly as a moral expression of the Legislature against the use of alcohol.

Mr. Hallett. Why not then be content with a resolution to that effect, as against the Convent rioters? Witness, however, thought it was best to have the force of the law on the side of Temperance. He said he believed this law to be, on the whole, a sound and a wholesome law—a law which expressed the "sober second thought" of the people of this Commonwealth, that ardent spirits were not necessary for a man in a state of health, but on the contrary, highly detrimental. He regarded it not so much for its effect in putting a stop to the traffic in ardent spirits, as for exerting a moral influence of the highest importance, on the people of the State. The law no longer recognized the deceiving doctrine that ardent spirit is a benefit to the community—*a public good.* He would rather there would be no law, than that a law of the Commonwealth should teach such an egregious falsehood. He thought that the traffic in ardent spirits could not be *regulated.* If licenses were granted, more people would engage in the traffic without licenses than with—but by *prohibiting* the traffic, it would be driven into corners and secret places, and it would be consequently much diminished. We shall then no longer find respectable people among either the buyers or sellers.

On further questions, witness says that the greatest argument against the new law, was that it did not restrict wines. In regard to the licensing of Apothecaries, to sell for medicine, it was liable to abuse, and would be likely to increase that sort of sickness. He thought it a fault in the law.

Being asked how he could convict an Apothecary for selling to a man who asked for medicine and used it for beverage; he admitted it must be a question of intent in the seller, and not the act of the buyer, to determine the guilt. Of course difficult to prove to a Jury.

Being questioned as to the objects of the Temperance Conventions held during the session, one of which had just closed in Boston; he denied that they were designed to control the Legislature as to this law, but admitted that no such Conventions had been held here, simultaneously with the Legislature, until this law began to be pressed. A great many members of the House were members of the Convention. The Convention resolved to sustain the law. Witness himself offered resolutions in the Temperance Convention, declaring that it would be immoral to license the sale, and that the Legislature would be false to their trust, or to that effect, if they repealed the law. They were opposed by Profes-

* The District Attorney committed an egregious error in this statement. The official returns of crime in Essex County show, that in 1835, the whole number of commitments to Jails, &c., for crime, was 352. In 1836, 357. In 1837, 406. In 1838, 453. In Middlesex, where licenses were granted, commitments for crime in 1835, 171. In 1836, 106. In 1837, 142. In 1838, 124.

sor Greenleaf, on the ground that they seemed to dictate to the Legislature, and were liable to the charge of intermeddling; but neither witness nor the Convention so understood them, and they were adopted. Mr. Huntington here stated that his engagements required him to leave town, and was released from further cross questions.

Joseph Tripp, of New Fairhaven, a member of the House. Knew of no tipling shop in Fairhaven, but could not say it was not sold there. In New Bedford a great deal was sold.

Mr. Bachelder of Lynn. Should think the use in that town had had diminished three quarters, but they get it yet as much as they want. There was much opposition to the law. The Temperance cause had produced a very great change for the better. He thought it had improved the paupers. The practical results have been favorable in refusing licenses.

Cross examined. The Apothecaries selling, under the new law, might lead to great mischief. The journeymen could send for a pint or so, for medicine, and drink it in their shops. If wine was free, it would be very injurious to temperance. Thought there was so much opposition, it was going back.

Mr. Hallett. Deacon Grant stated, that a man in Lynn had to send to Salem to get rum. Is it so? *Ans.* Any man who loved it could get rum in Lynn without going to Salem.

Mr. Macomber, of New Bedford. The new rum formerly came from Rhode Island to New Bedford. It never came from Boston. There was undoubtedly a great quantity came to New Bedford, and was sold there, but he could not state the particulars.

Capt. Taber, sworn. Resides in New Bedford. Is connected with four regular packets, running between Boston and New Bedford. Has examined their freight books, and finds this result. In 1836 they carried to New Bedford from Boston, 1391 barrels, 45 hogsheads, and 35 pipes of ardent spirits. In 1837, 1233 barrels, 37 hogsheads, and 39 pipes. In 1838, 1072 barrels, 27 hogsheads, and 9 pipes.

Rum was brought from Rhode Island formerly, but he understood but little came that way now. As to what is done with the rum his vessels carry to New Bedford, the principal part is consumed there. New Bedford also supplies Rochester, Wareham, and other towns. Is not acquainted with all the modes of supplying customers and evading the law. One individual carts it round as milk, in milk carts. Carries on a large business in this way. One of the Committee asked the name. Witness says it is Eleazer Phillips. Very few are considered respectable who deal in it. Should think the effect had been to change the trafic from respectable to disreputable hands. Should think on the whole, the effect was good as to the law, and must promote temperance. Is himself a temperance man.

Cross-examined by Mr. Hallett. Says the whale ships never carry out spirits, and knows of none exported. All that comes there must be consumed or sold in New Bedford and adjoining towns. Should think his own packets did about three quarters of the freighting between Boston and New Bedford. There is another regular packet, not in his concern, besides transient vessels and coasters. In 1837 witnesses' Company voted not to carry any spirits. This sent it all to the other concern, which continued to carry it. His concern then rescinded their vote, and began again. Supposed that might be the reason his vessels did not now carry as much as formerly.

Mr. H. also questioned witness as to *wine* casks, which were sent by his vessels from New Bedford to Boston empty, and returned filled. He

says he does not include these in his statement. There were 37 or 38 such casks in 1835. Now there are from 40 to 50, annually carried. He cannot tell their contents. They may have been spirits in wine casks. Being asked as to transportation by land, empty jugs and kegs sent in baggage wagons, &c., says he cannot state, but no doubt a great deal is sent in that way.

Mr. H. You say no respectable persons deal in the article. Is it thought respectable for temperance men to receive the profits of *freighting* the article? Witness had no opinion to give.

Mr. Hallett. Is not rum &c., brought into New Bedford from New York? *Ans.* Does not know the fact, but presumes it is so.

Mr. H. Do you not know of a particular instance in which rum was brought into New Bedford from New York, which a person in New Bedford was charged with having procured on credit, by false pretences? *Ans.* He did know something of a quantity of rum under such circumstances, brought from New York to Rochester and carted to New Bedford by night.

Mr. H. To whom was that rum brought?

Mr. Stowell, of New Bedford, one of the Committee, objected to the question, as irrelevant.

Mr. Hallett. The gentleman from New Bedford, (Mr. Stowell,) was the member who *insisted* on the names of the customers of the dealers being given, and I hope Mr. Chairman, he will not object to the application of his *own rule* to *himself.*

Mr. Walcott (Chairman of the Committee.) It is true that the gentleman made the motion requiring the names, and it appeared to him the question was a proper one, under the rule.

The witness then said the person was Eleazer Phillips, the same who sent out the milk carts.

Mr. H. Has he been demanded by the Executive of New York, and delivered up by Governor Everett, on a charge of obtaining the rum by false pretences? *Ans.* Such is the fact.

Mr. H. Who went on to New York with Phillips and got him bailed?

Mr. Stowell here interposed and said, Mr. Mc'Nevers was his bail.

Mr. Hallett to Mr. Stowell. Was it not Mr. Stowell? No answer.

[After the examination of Mr. Macomber and Mr. Bachelder, (which is given before that of Capt. Taber, to preserve the connexion,) and as the session of the Committee was drawing to a close, *Mr. Stowell* rose and desired to make an explanation. He said a question had been proposed to the witness (Capt. Taber,) as to his, (Mr. Stowell's,) connexion with the procuring of bail for a Mr. Phillips in New Bedford. The object was to cast obloquy upon him, Mr. Stowell, and he wished to explain the circumstances. Mr. Phillips is a near relative of my wife. He was indicted, in connexion with one Gurney, for obtaining goods in New York, under false pretences, among which was the rum spoken of. Gurney had bought goods in New York for two years, and sold to Phillips, who had paid for them. Gurney's creditors came to New Bedford, and being unable to obtain their demands in a civil suit, had him arrested as a swindler, and Mr. Phillips as an accomplice, who had property. Gurney agreed to turn States evidence against him. At the request of the friends of Mr. Phillips, and of my father-in-law, I went on to New York with Mr. Phillips, and procured bail for him as I had a right to do. [It afterwards appeared that Mr. Stowell gave the bail in New York, (a citizen being required) a check on or of his father-in-law for the whole amount of the bail bond, to save the bail harmless.]

Mr. Stowell concluded his statement by repeating that he considered

the questions as to Mr. Phillips, designed to cast odium upon him, in retaliation for having required the names of the purchasers in New Bedford, and that it had nothing to do with the case.

Mr. Hallett considered it directly in point and very material to the inquiry. The Memorialists had been trying to show, that notwithstanding the prohibition law, spirits were freely obtained in New Bedford, and this evidence had been excluded on the motion of Mr. Stowell himself, unless names were given. It now turns out that Mr. S. was himself in posession of the fact that a large quantity of rum had been surreptitiously brought to New Bedford, in the night, by *one of his own relatives*, the largest dealer in the place; and yet he concealed this fact from the Committee while suppressing other evidence to show the sending of rum to New Bedford. My object, said Mr. H. was to let the *truth* cast odium where it might, and but for this inquiry of Capt. Taber, this fact would have been concealed. I have no wish to injure the gentleman, and do not deny his right to procure bail for his relative of the milk cart, but I would merely suggest for his reflection, that if he is willing to uphold and stand bail for those who obtain *rum* by fraudulent means, he perhaps, ought to be a little more charitable to those who sell it lawfully.

Mr. Crosby now put in a statement as to the relative amount of costs and fines in the license prosecutions under the old law. In two years there had bean 645 prosecutions, and 401 convictions. Fines $8093. Costs $7670.

Rev. Mr. Cobb, for the Middlesex Temperance Society, made an address to the Committee of considerable length, for the law.

Judge Leland of Roxbury desired to explain his testimony. He said he was in favor of the principles of this law, but now he reflects upon it, he thinks a modification would be better. He is in favor of a prohibition of sale as far as it can be carried. But in some cases there are strong interests to resist the law. The case in New Bedford, as given here, showed this. In New Bedford and Boston, and large places, the law would find great obstructions. I have no doubt you cannot enforce the law unless you add wine. It is not strong enough as it is, and it will baffle all your skill to enforce it. If you prohibit only up to fifteen gallons you dont go far enough. If in Norfolk you should say one gallon, the people in two years will carry it to a hogshead. I want to give the people a right to prohibit as far as you can carry it.

I wish also to say that I have received a communication from the Mayor of Boston, complaining that I had reflected on the City Government. I meant only to say that there would be a great excitement here about this law, and it could not be disconnected from the city officers, nor could you expect any great zeal on their part to carry it into effect. It could only be done by a systematic course on the part of the friends of the law.

I am opposed to having a law attempted, that is, to be trampled on, and I fear such will be the case with this. I was astonished to hear of the amount sold in New Bedford, &c., in spite of a prohibitory law. So far I wish to qualify my former testimony.

Mr. Hallett. Will you please state whether you mean that the City authorities would not execute the law from the intrinsic difficulties of the case, or from wilful neglect? *Ans.* I meant distinctly, from the intrinsic difficulties of the case and not the predisposition of the CityAuthorities.

[The testimony here closed on both sides.]

Monday, February 18.

Mr. Henry Williams, of Boston was heard for fifty minutes, in reply to one of the Remonstrants' counsel, Mr. Bolles, who had described the

law of 1822, of which Mr. W. was the author, as an infamous and "*damnable* law," that would confer "an immortality of infamy" upon its author!

Joseph Harrington, Esq., of Roxbury, made an argument in favor of the law, for the Roxbury Remonstrants. After Mr. Harrington closed, Mr. Hallett summed up the statistical facts and other evidence, particularly bearing on the pauper question, and presented elaborate tables of statistical facts.

Monday, February 18.

SUMMING UP BY MR. HALLETT

For the Memorialists,

With Statistics as to Crime and Pauperism.

Mr. Hallett thanked the Committee for the opportunity allowed him to sum up the evidence in this Investigation, and to present a series of important statistical facts, which he should proceed to do as briefly as possible, leaving to his associate Counsel, (Mr. Dexter) the general close in the argument for the Memorial.

The law under consideration was a great change in standing laws for two hundred years; suddenly making an innocent act of the citizen, a crime to-day, which ever before had been protected and encouraged as lawful and proper. To induce the Legislature to sustain such a change, those who demand it were bound to show great and certain *good*, as the result. There should be no doubt, no experiment in so grave a matter, to warrant such new and extraordinary legislation. The remonstrants had failed to make out such a case, or to show the necessity for such a change in legislation.

Their positions in support of the Act of 1838, and ours in answer to them, are condensed in the following general points.

First. They contend that the Act goes upon the assumption that intemperance proceeds from dram shops which it is intended to suppress. This is their main argument, as to the expediency of the law.

We show that this assumption is unfounded, so far as this Act can operate as a remedy, and that instead of diminishing, its effect will be to increase the places of sale.

1. To this point the evidence of the Mayor and Marshal, and the admissions of Judge Leland, are conclusive as to the effect in Boston.

2. The testimony for the Remonstrants shows an increase of dram-selling, under prohibition, in New Bedford, Newburyport, Gloucester, and other towns, and also an increase in Salem. They do not show a positive diminution any where that is not traced to voluntary, moral causes. It is impossible to escape from the fact, that in all the large towns, the places of resort for drinking, will be increased by the operation of this law, and the ineffectual resistance and evasion it will give rise to.

3. In the smaller towns, where there has been little or no sale, it will increase facilities for obtaining small quantities, by the licensing of Apothecaries who can sell to any one who will pretend he wants it for medicine, and especially by the universal license to keep wine shops. Every man who so chooses, can open a wine shop, under this new Act, and serve his customers with white or red wines to their liking. Their own witnesses say if wine is sold, spirit will be. The whole argument therefore, touching dram shops, entirely fails, and is disproved by the whole force of the testimony on both sides. If a law is wanted to suppress dram shops, this unconstitutional and ineffectual Act is not that law.

Second. Their second position is founded on the general evils of In-

temperance and the blessings of temperance. They called six witnesses on this point, Drs. Pierson, Channing and Alden, Mr. Grant and Revd. Messrs Tuckerman and Curtis, and occupied over two sittings of the Committee, besides their arguments in the opening. But they left even this point in more doubt than it was when the investigation began.

The object was unfair and deceptive—to identify the cause of temperance as a principle of good, with this particular Act, when the whole issue is, not temperance, but whether this Act will best promote temperance.

We admit the evil, but deny that this Act is a remedy, and contend it will prove an aggravation of the evil. The difficulty is, that the friends of the Act, under a sort of monomania from contemplating extravagant pictures of this evil, comprise in it the sum of all evil; as if human nature would be perfect, without alcohol. We hold that there are other evils in the world, besides intemperance; a fact which seems to be entirely disregarded by the ardent friends of this law. So far from remedying this single evil, a law of prohibition will inevitably result in universal license. In short, the axiom which Reformers must sooner or later admit, and the sooner the better for the cause, is, that REGULARION PROMOTES TEMPERANCE, AND PROHIBITION ENCOURAGES INTEMPERANCE. On this maxim we stand, as the rational friends of practical temperance.

Third. They assume that all other laws have failed to suppress intemperance, and therefore insist on this. As well might they rail against the divine law, for having failed to suppress sin.

We contend that the evil is one of those which law cannot reach or remedy; and that attempted prohibition is more injurious to Temperance than wholesome regulation; because the former cannot be enforced, and leads to universal license: the latter can be enforced, with the general consent, and will restrain the evil.

Fourth. They contend that by licensing the sale, the Legislature license intemperance, and that to restrain and regulate a lawful act, which by excess may lead to evil, is to sanction that evil. In other words that to regulate the sale, is to authorize an abuse of the use of ardent spirits.

The proposition refutes itself, because to regulate a lawful act, which if abused, may tend to crime, and punish the crime when committed, but not the innocent act that may be abused; is not to sanction the crime; whereas the other mode, to prohibit an innocent act in one man, least another should take advantage of it to commit an offence, is to punish the innocent because others may be guilty.

You punish assaults and violence, when committed, but you do not punish anger and ill temper, which lead to all assaults, and to most of the domestic misery in life.

You punish larceny when committed, but you do not destroy property, or fine a man for not concealing his property, so as to prevent all temptations to theft. If legislation should attempt to prohibit all acts that may tend to evil and crime, it must provide a special law for every possible human action.

The doctrine that it is the duty of the Legislature to remove all temptations to crime, would require the annihilation of all individual property to prevent larceny, and the restriction of every object that can excite a wrong impulse of human nature, or a longing of desire, or a grasping of avarice. No crime is committed without temptation and inducement, but the law, except in this single case, punishes no such inducement or temptation or desire, unless wilfully made and excited in order to abet the crime. The *intent* then becomes crime in the wilful abettor, and is punished because it *is* crime, not because it may tend to crime. It can-

not remove temptations to or the causes of voluntary moral acts. It punishes crime because it is a violation of some natural law or right secured by Society to the community or to individuals. It does not assume to punish inceptive acts that may tend to a violation of moral and divine laws, by abuse, and ultimately lead to a violation of Statute law. It cannot reach or remove temptations to sin. To assume such a power in legislation, would be to fly in the face of Providence, who has made man a free moral agent, and placed good and evil before him, that he may choose which he will. Will the friends of this law rail at the want of wisdom in the Almighty in not having removed all evil from the world, so that good only could exist? He is the only legislator who has the power to enforce such a law. Is man, without the power, wiser than God?

Here is a use of a particular article of drink, depending on voluntary choice. The moderate use is lawful in itself and not positively injurious, more than any other harmless luxury temperately enjoyed. The tendency of the use is to excess in some, which ruins themselves and injures others; and so is the tendency of every luxury or indulgence not absolutely indispensible to life. The excess is the evil, not the moderate use; and the only question for wise legislation is, how can it best restrain the evil effects, not how it shall prohibit or render impracticable the moderate use in all, lest it should lead to excess in some.

Content with the law, is the design of all wise legislation, and in free government there never can be, and never ought to be, content with that kind of legislation which punishes one man for the crime of another, or deprives one man of his inalienable right, because another man may abuse his. There must be something wrong in this Act, for while legislation is becoming liberalized, in the punishment of crime itself, even to the abolition of capital punishment, for all but two offences in this Commonwealth; this law proposes to create new and artificial crimes in order to punish them.—A manifest violence to the spirit and progress of the age. When nearly all civil and religious improvement is left to voluntary influences, is it wise to invade voluntary morals by arbitrary laws?

Fifth. They deny that the public good requires licensing and regulation, but demands prohibition; and they sneer at this phrase in the old law, of "*public good.*"

But if regulation restrains the evils of intemperance, and prohibition will increase those evils, then the "public good" requires regulation rather than prohibition. This is the very point at issue. We contend, and all experience proves, that a law of prohibition cannot be enforced, while a law of regulation of trades and occupations may. That the latter promotes, while the former injures, the cause of temperance. Hence if the public good is to be consulted, that course is be adopted which will practically secure the most public good, Licenses are granted for that purpose, and not as the friends of prohibition pretend, because the public good requires the use of the article.

Even in the little town of Tisbury, (Dukes County) entire prohibition cannot be enforced, and one of the Selectmen of that town has testified that they find it necessary to wink at one place being kept open, as a sort of safety valve. There is true philosophy in this, and there is sound sense in requiring licensing for the public good. Without either licensing or prohibition, the sale would be universal under general standing laws as to all property rights. With prohibition it will practically become so, and the evils of crime, prosecutions and excitements and party conflicts are to be superadded. Licensing is the only practicable limitation, un-

til universal consent establishes disuse without force laws; and the whole question is, will you have this limit or have none?

You might as well undertake to prevent the eruption of volcanoes, and the escape of electricity, by plastering over all the holes in the earth, as to attempt to restrain the appetite by a law of prohibition.

Sixth. They put into the case the physical and mental evils of intemperance, and its effects on social affections.

All this was admitted before they attempted to prove it, in an exaggerated form, as if to terrify the Legislature into making unjust laws.

Our reply is, this law is no remedy, nor do they show that it can be any. They beg the question by assuming it will be beneficial if it can be enforced, and the farthest they go, is to *hope* it can be enforced, while we show that it cannot be enforced.

On the other hand we show that this Act will be a positive injury to society, to the social virtues, to the rights of property and person, to the public justice and to the cause of temperance.

1. By the costs and conflicts in unavailing prosecutions to enforce a law against the strongest convictions of personal right in so large a mass of the community as will be found unyieldingly opposed to it, on great fundamental principles.

2. By the hypocracy, meanness and malice it will engender. By the evasions if not open violence it will incite. By the false witnesses to convict, and the perjuries to escape conviction, in your Courts, and by the inevitable disagreement of Juries, who are bound to acquit, if convinced the Act is unconstitutional, unequal and unjust.

3. By excitements, conflicts and divisions in communities, to the disturbance of good neighborhood and the public peace, and by the fixed determination it will give to men to obtain at all hazards what an unjust and unequal law assumes to prohibit to one class of citizens, and allow to another.

Parties are already formed, for and against this Act, with bigotry, zeal, self-will, pertinacity, interest, and all the incentives, to an excited conflict animating them, as well as principle. Let the struggle go on, and how long before they will be ready to take each other by the throat? Such an unhappy state of things will hardly promote the social affections! Men of independent spirit, can never be subdued in such a struggle, by the strong arm of a tyranical law, and even if subdued, it can only be to make them discontented citizens, and to leave a breach in social and civil relations, as enduring as the sense of wrong.

Seventh. The supporters of the Act, answer our Memorials from Boston against it, by sneering at the signers, and the manner in which they write their names. They do not all own or hire houses, ride in carriages, and write elegantly! therefore their names are not to count in a petition to the Legislature.

The argument, like the Act it upholds, is founded on unjust and aristocratic distinctions in Society. It assumes that a man without visible property has no stake in society, and should have no political power in the State. It is money and not men, which they contend should count in memorials and petitions to the Legislature touching the public good! The Constitution recognizes no such distinction. It says "the *people*," not merely those who own houses and can write well, but "the *people*, have a right to give instructions to their representatives, and to request of the legislative body redress of wrongs and grievances."

There are two Memorials from citizens of Boston, bearing 5900 signatures. The remonstrants sneer at all they do not find in the Directory, as worthless and of no account. But there are 15000 voters in the City of

Boston, and it is said, not 8000 of them can be found in the Directory. They are without houses of their own, young men, mechanics, journeymen, laborers, the hard working and honest citizens, who are ever more jealous of an infringement on personal rights than the specially favored few, because unequal laws always fall hardest on them. Are these to be excluded and denied the rights of citizenship?

If this number of 5900 *men*, (not women and children) are influential and honest citizens, you then have an immense moral power to contend against in enforcing your obnoxious law. If otherwise, you then have a mass of more dangerous opposition; a physical force, which if reckless and unprincipled, as is pretended, you have no standing army, no police and no power to control. Let the Remonstrants take their choice of the two impediments to their impossible law.

Eighth. Their eighth position in support of the Act is, that intemperance is a load on political economy, in reference to crime and pauperism.

If this is meant of intemperance as a moral and physical evil, there is no controversy between us. If an argument for the act of 1838, as a remedy, we deny its truth and its application.

Effects on Crime.

1st, as to Crime. Their evidence is vague and inconclusive. Their statistics mere *guesses*, without reasonable data or tangible facts—at best, the *excuses of criminals* who think to palliate their crimes by attributing them to intoxication. In most cases the estimates are made by men zealous in exagerating the evil as the *source* instead of (often) the *consequence* of all other evils. It is a problem not yet solved, how far intemperance engenders crime, and leads to misfortune; or crime and misfortune engender intemperance, The vices always go together, like the virtues. They act upon each other, as mutual cause and effect. The vicious become intemperate because they are vicious, quite as often perhaps, as the intemperate become vicious because they are intemperate.

The temperance Reformers regard it as a sort of "pious fraud," to attribute all vice and crime to intemperance, in order to render it odious. The vice of intemperance cannot be rendered too detestable, as a vice, but when these loose statistics are used to urge the Legislature to violate fundamental rights, and enact arbitrary and unjust laws, it becomes a duty to expose their fallacy. The higher order of crimes, the frauds, and conspiracies, and villainies that wound society deepest, are rarely allied to intemperance. It requires cool heads to perpetrate attrocious crimes. Such is the evidence as to State prisons.

2nd. There is no increase of crime shown, or that can be shown, which calls for an exercise of a contested and dangerous power by the Legislature, or for any extraordinary and doubtful hypothesis to be assumed to justify a questionable Act of legislation. We are making punishments milder, and simplyfying the criminal code, on the very ground that crime is diminishing, and yet the argument now is that we must create artificial crimes, and make lawful acts penal, in order to prevent crime!

There has been in fact, no increase of crime in this country, of late years, to produce alarm, and demand an increase of penal enactments. Population has increased much faster than the ratio of crimes, and in no community on earth, is there less of positive crime than in Massachusetts, though our Statute book goes beyond that of any free State in the world, in the creation of artificial offences; and hence we seem to have more criminals than any other State, and our criminal costs of prosecutions exceed that of all the other New England States together.

The Remonstrants have given in evidence, the 9th Annual Report of the Prison Discipline Society. Page 29, is an article headed "Not an

alarming increase of crime in Massachusetts, compared with the increase of population." This is shown by their tables giving the results of ten years up to 1834, the very period when no prohibitory laws as to licenses were in existence.

In *Suffolk*, where there is the largest foreign influx, the population had increased *one third* and crime less than *one sixth*. In *Essex* County, the only town where crime had diminished, was Newburyport, which is now held up by the District Attorney, in his evidence, as the most reprobate in violating the law of prohibition. Here are figures to demonstrate our position.

Table of the relative increase of Population and Crime in Massachusetts for ten years, from 1833 *to* 1833.

Counties.	Increase of Population in ten years.	No. of Criminal actions in 1833.	Increase over 1823.
Suffolk	18,000	1,318	197
Essex	9,000	210	79
Middlesex	16,000	175	94*
Barnstable	4,000	15	9
Dukes	225	9	6
Bristol	8,000	162	53
Berkshire	2,000	34	6
Counties where Crime had decreased, or not increased.			
Hampden	3,000	32	1
Hampshire	3,700	17	5
Norfolk	5,000	17	14
Worcester	10,000	40	14
Plymouth	4,000	20	14
Franklin	200	31	14

* Including Lowell within a few years.

We all agree that intemperance has decreased since 1833, by change of habits and customs, under enlightened moral influence. If crimes have increased in the past five years, it would follow that there is more crime under the Temperance reform than before it began. But the truth is, crime has not increased. Either way, the argument as to crime, utterly fails to show a demand for, or justification of this law.

It has become quite too common to ascribe all crimes and all evils to Intemperance, and to libel ourselves in the estimation of the world, as a community of tipplers and drunkards, for the sake of making out a strong case. The community bore this injustice so long as it is confined to the declamation and the *guessing* statistics of Temperance agents. They will revolt at it, when it is urged as an argument to measure out drink and diet by law—to grant free indulgence to the rich and deny the right of moral volition to the comparative poor. We have been driven by the harshness of this law and the arrogant confidence of its supporters, to test the truth of their positions, which we were not prepared at first to deny. They would not take our admission, and we now demolish their whole arguments, by showing the falsity of their assumed facts.

The Remonstrants put in another Document the 13th and last Prison Discipline Report. From that Report I have drawn the following comparison of State Prison offences, not at all favorable to the force laws of Massachusetts.

TABLE *of relative commitments to the State Prisons, in five States from* 1836 *to* 1839, *at intervals of four years.*

	1826	1830	1834	1837	1838	Decrease.	Increase.
Massachusetts. Whole No.	313	290	277	291	313		Same.
Committed	81	115	119	99	116		35
Maine. Whole No.	79	94	64	77		2	
Committed	58	36	33	34		24	
New Hampshire. Whole No.	59	68	79	72	70		11
Committed	13	31	13	12	5	8	
Connecticut. Whole No.	134	167	189	204	198	64	
Committed	66	73	54	57	57	9	
	From 1831	1832	1834	1837			
Sing Sing N. Y. Whole No.	875	906	827	753		122	
Committed	338	289	258	261		76	

The table is not complete in all the Five States, from lack of returns, and the last year in Massachusetts is taken from verbal testimony, but the result, by any mode of comparison, gives a decidedly worse exhibit for Massachusetts, with her temperance laws, than either of the other States without them. In every other State the commitments have decreased. In this State they have alone increased 35, while the whole number is not diminished, though it has done so in every other State but New Hampshire.

What then becomes of the argument that the state of Crime among us demands Temperance force laws?

PAUPERISM.

Ninth. But the great argument for the Act when we began this investigation, was pauperism and intemperance. The opening Counsel for the Remonstrants exclaimed "the statistics on crime and pauperism are overwhelming!" And so indeed he will find them, but not on his side of the question.

We did not desire to detain the Committee on the evils of intemperance, or its effects on crime and pauperism. Supposing there must be some truth in statements made so confidently, we tendered a general cognorit, and offered to make up the issue upon the merits of the Act of 1838. They refused, and insisted upon proving what we had not denied. The inquiry has been forced upon us, and we will meet it with facts and figures that cannot be questioned.

We deny totally that pauperism is increased by licensing, and diminished by prohibition; and if there be truth in official returns, and the oaths of town officers, we will demonstrate the direct reverse of that proposition.

We put into the case, as the best possible evidence, the "abstracts of the returns of the Overseers of the Poor," in the towns in the State, from 1835 to 1838 inclusive.

The returns of 1835 and 1836, were made under an order of the House alone, in 1833, requiring the name and circumstances of each individual pauper. There are 306 towns in the State, and this number of Boards of Overseers are to make their separate returns to the Secretary of State, which precludes all possibility of concert between them, and would seem to insure the truth, if there can be truth in statistics. The Secretary makes an abstract, by Counties, from these town returns, and these abstracts are the authority we rely on in this statement.

In 1835—164 towns made detailed returns. Whole expenditures of paupers in the Commonwealth for that year, $239,476, or $392, to every 1000 inhabitants.

In 1836—204 towns made returns. The whole amount of expenses in the State is not given.

In 1837, and 1838—returns were made under an act of April 18, 1836, requiring the Overseers to make correct returns, under a penalty of $100. The question as to intemperance, was precisely the same in both years.

In 1837—returns were made from 289 towns—all but 16 of the small country towns. Total expenses $306,548.

In 1838—returns were made from 299 towns—all but seven in the State. Expenses, $325,087—which is $437 to every 1000 inhabitants. Increase since 1835, $45 to every 1000 inhabitants. The returns of these towns last year, are made under precisely the same specifications, and those of the two previous years correspond as far as the towns are given, so that taking the same towns, a parrallel comparison can be carried through the whole period.

There is an apparent discrepancy in the returns for the City of Boston. (Suffolk,) in 1837 and 1838. No return of the out door poor was made till 1837. The same question was put to the Overseers in 1837 and 1838, to which they gave the same answer, as to intemperance, viz: "Three fourths of those in the Alms House; of the out door poor *a much less proportion.*"

This is as definite as the description by a witness of the size of a stone which knocked a man down, "about as big as a piece of chalk!" In the Alms House estimate, it may possibly approximate to truth, though unquestionably greatly exagerated, and most unjnst to the unfortunate poor. But as to those assisted *out* of the Alms House, it is a mere wanton *guess*, and means nothing, I therefore throw it aside in both years, as giving no information whatever, and take only the estimate of the poor in the Alms House. The Secretary of State, Mr. Bigelow, has very properly pursued this cause this year, (1838) in the abstract. Last year, (1837) Mr. Frothingham, one of the Clerks in the Office, who made up the abstract, took three fourths in the Boston Alms House 1082, and then at a mere *guess*, added *one half* of those assisted out of the Alms House, 918, making a lumping total of 2000. In this way are the unfortunate poor slandered by the wholesale guesses of temperance reformers; too indolent, or self sufficient to investigate the truth; and upon these loose libels on the poor is founded the chief pretence for this *Sumptuary Act* to restrain their appetites, and restrict their rights, in order to save from a pauper tax the pockets of the rich man who may freely indulge in his luxuries.*

The comparison is therefore properly made, as to Suffolk, upon the Alms House report for 1837 and 1838. With these explanations, we submit the following tables, prepared, and compared with great care, and the accuracy of which, Mr. H. said he had tested in their preparation, with the utmost precision practicable.†

The Counties in which Licenses have been withheld from 1833—4, and which we designate *the prohibitory Counties*, are Norfolk, Bristol, Plymouth, Barnstable, Nantucket, Dukes, Essex, and Hampshire—8 Counties. The other six Counties, with a much larger population, and much more exposed, as a whole, to foreigners and other causes of pauperism, are Suffolk, Middlesex, Worcester, Franklin, Hampden and Berkshire. These we designate as the regulating Counties.

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* The Secretary has corrected the error as to Boston, this year, and in a note says, "The abstract includes for Boston only 1088, the same being "three fourths of those in the Alms House." The Secretary having no means of estimating with precision the proportion of the out door poor."

† The tables were submitted to the committee and compared by them for a fortnight, with the official returns, and no error was detected in them.

PAUPERISM. TABLE No. 1.

Comparison of Pauper Returns from 1835 *to* 1839, *of all the towns in five prohibatory Counties, from which returns were made in* 1835, *N. B. The returns for* 1835, 1837, *and* 1838, *are from the same towns in each County. The retnrns for* 1836 *are imperfect, and do not embrace the same towns.*

Norfolk County, 16 *Towns.**

Year	No of Towns	No of Paupers	Intemperate	Not stated	Expense	Whole Population of the Towns
1835	16 out of 22	392	86	120	$7,534	28,838
1836	19 out of 22	411	131	139	13,155	36,956
1837	16 out of 22	568	209		12,686	28,838
1838	16 out of 22	633	262		14,942	28,838

* In 17 towns in Norfolk in 1833, there were, 343 Paupers, 106 Intemperate: showing an increase ever since prohibition began.

Bristol County, 15 *Towns.*

Year	No of Towns	No of Paupers	Intemperate	Not stated	Expense	Population
1835	15 out of 19	430	125	113	10,664	35,238
1836	12 out of 19	396	158		10,225	31,822
1837	15 out of 19	854	523		20,659	35,238
1838	15 out of 19	915	604		20,122	35,238

Plymouth County, 17 *Towns.*

Year	No of Towns	No of Paupers	Intemperate	Not stated	Expense	Pop. in 17 Towns
1835	17 out of 21	361	88	51	9,814	36,646
1836	Same towns	344	72	60	12,319	36,646
1837	Same towns	544	174		15,478	36,646
1838	Same towns	572	259		16,760	36,646

Essex County, 17 *Towns.*

Year	No of Towns	No of Paupers	Intemperate	Not stated	Expense	Population
1835	17 out of 26	536	153	99	14,029	41,539
1836	Same	518	177	54	13,026	Same
1837	Same	951	443		22,737	Same
1838	Same	968	502		23,707	Same

Not including Salem in 1836.

Hampshire County, 17 *Towns.*

Year	No of Towns	No of Paupers	Intemperate	Not stated	Expense	Population
1835	17 out of 23	230	67	30	5,051	23,247
1836	14 out of 23 not corresponding	172	14	17	3,762	21,079
1837	17 out of 23	362	185		8,928	23,247
1838	17 out of 23	380	127		9,505	23,247

PAUPERISM. TABLE No. 2.

Comparison of Pauper Returns for 1837 *and* 1838, *between Eight Counties, in Six of which prohibition has been entire for four years, (and in two all but taverns, viz. Essex amd Hampshire,) and Six Counties where there has been no prohibition.*

The Eight Prohibitory Counties.

Counties	Increase of Poor	Decrease of Poor	Increase of Intemp'nce	Decrease of Intemp'nce	Increase of Foreigners	Decrease of Foreigners	Increase of Expense	Decrease of Expense	Population
Norf'lk	9		64			57	$1,992		
Bristol	117		63		24		543		Aggregate Population in 1830 286,610
Plymouth	49		99		Same		1,896		
Barnstable	13		23		2		274		
Nantucket	69		8		2		500		Aggregate Population in 1837 322,848
Dukes	Same		Same				18		
Hampshire	13			53		8	757		
Essex	191		250			20	5,144		
Totals	461		498	53	28	85	11,124		

The Six Regulating Counties.

Counties	Increase of Poor	Decrease of Poor	Increase of Intemperate	Decrease of Intemperate	Increase of Foreigners	Decrease of Foreigners	Increase of Expense	Decrease of Expense	Population
Suffolk	381			15	381			$177	
Middlesex	15			190	65		2,308		Aggregate Population in 1830 342,142
Worcester	35		38		18		3,205		
Hampden	51		20			12	2,257		
Berkshire	29		23		13		1,450		In 1837 378,483
Franklin		2	37	37	2			1 631	
Totals	511	2	81	242	478	12	10,220	1,808	

Showing the results in *favor* of the *Regulating* Counties, viz: Greater increase of Poor 48; decrease of Intemperate Poor 161; increase of Foreign Poor 615; increase of Expenses $8,412.

In the *Prohibiting* Counties, increase of Poor 461; of Intemperates 445; decrease of Foreign Poor 57; increase of Expenses $11,124.

Remarks. Relative nett gain in the *Regulating*, over the *Prohibiting* Counties, (notwithstanding a large increase of foreign poor in the former, and decrease in the latter, exceeding by 104 the whole increase of poor in the former,) viz: nett gain in intemperate poor 606; in expense $2712.

The comparison is the more striking from the fact that the population in the six Regulating Counties which show the best results as to pauperism and intemperance, was greater in 1830 than in the Prohibiting Counties by 55,532, and in 1837 by 55,535. That excess of population if added to the Prohibiting Counties, would, in the some proportion, add 86 intemperate poor, making their number, with the same population as the six Regulating Counties. 531 actual increase, and a nett relative increase of 682.

If SALEM is deducted from Essex, it only varies the result 25 less paupers, 22 less intemperate, 5 less decrease of foreigners, and $400 less expense. Essex would then stand 166 increase poor, 228 increase intemper-

ate, and $4774 increase expenses; and Middlesex 15 increase poor, 190 decrease intemperate, and $2308 increase expenses.

The comparison between Essex and Middlesex is a most conclusive demonstration of the effects of the two policies. Essex has been the field of District Attorney Huntington's zealous labors. Bishop Laud never persecuted the conventiclers more furiously than that officer has the retailers in Essex. He there reigns supremely in Courts and over juries, and convicts whom he will. He has driven this process for six years, while Middlesex and her juries have been unawed by his official power, and that county has licensed and sold freely. What is the result in both these agricultural counties?

Essex has 93,000 population, Middlesex 98,000.

Essex has Salem and Newburyport, Middlesex, Lowell and Charlestown.

Essex has had a decrease of 20 foreigners to relieve her pauperism, Middlesex has had an increase of 65 foreigners to add to her pauperism, with the constant source of this increase, the shifting manufacturing population of Lowell and other like places, to operate on her pauperism. And yet Middlesex exhibits 151 less increase of poor, 190 decrease to 228 increase in Essex of intemperate poor, and $2466 less expense in the support of the poor.

No returns of overseers, who are for or against licensing, can affect these aggregates, as to whole numbers and whole expense. The result can only be traced to the operation of the two systems of regulation and prohibition.

The like result is shown as to crime. In three years, from 1835 to 1239, Essex has sent to her prisons 1211 criminals. In the same period, Middlesex but 945. Gain 257. Both counties have the same prosecuting officer.

PAUPERISM. TABLE No. 3.

Comparison of Pauperism and Intemperance, between the years 1837 *and* 1838. *Full Returns, and complete from all the Counties.*

Counties	Whole No of Poor in 1837	Whole No of Poor in 1838	Intemperate in 1837	Intemperate in 1838	Foreigners in 1837	Foreigners in 1838	Expenses in 1837	Expenses in 1838
Suffolk	3,294	3,675	1,087	1,072	1,304	1,684	40,913	42,736
Essex	2,421	2,512	1,611	1,861	190	170	53,328	58,409
Middlesex	2,184	2,099	1,358	1,168	768	833	51,518	55,826
Worcester	1,360	1,395	519	557	136	154	31,5[illegible]	31,713
Hampshire	428	441	202	149	44	36	10,681	11,438
Hampden	316	397	135	160	23	35	7,821	9,878
Franklin	435	433	129	92	2	4	11,233	9,602
Berkshire	539	568	237	150	21	34	11,0[illegible]2	12,452
Norfolk	800	809	297	361	144	87	17,809	19,751
Bristol	1,310	1,47 7	866	929	201	229	27,763	28,306
Plymouth	636	685	201	291	35	35	17,6[illegible]8	19,514
Barnstable	307	321	58	81	1	3	12,588	12,862
Dukes 3 towns	41	41	4	4			2,302	2,320
Nantucket	98	107	79	87	1	10	6,720	7,229
Totals in 305 Towns	14,099	15,069	6,673	6,962	2,870	3,290	3[illegible]6,541	325,087

Note. In 1835 the Commissioners on Pauperism estimated the whole expense in the Commonwealth $239,476.

In 1835, Governor Davis, in his message, called the attention of the Legislature to the fact that pauperism was on the increase.

Mr. Artemas Simmons, of the Boston Almshouse, says: "The pauper expenses are *twice as great* in Massachusetts, in proportion to population,

as in New-York, where returns are made annually, by counties." What is the plain inference? The pauper expenses were never seriously complained of as increasing in this State, till the force temperance laws began to operate. Under that process they have become *double* the like expenses in New-York, which has a vastly less moral and industrious population, as a whole, with immensely more foreigners and vagrants, and without a single force temperance law!

PAUPERISM. TABLE No. 4.

Comparison of Aggregates for the State, in 1837 *and* 1838

	Whole No of Paupers	Intemperate	Foreigners	Expenses
In 1838	15,069	6,962	3,290	25,087
In 1837	14,099	6,673	2,870	306,548
Difference against 1838	970	289	420	$18,439

Decrease of expense in Suffolk and Franklin, $1,808
Increase in all the other Counties, $20,537

☞ The only towns in the State which have not a single pauper, are Erving and Munroe, in Franklin County; one of the most temperate counties, and the most opposed to this act of any in the State.

Plymouth is the only county from which full returns have been made for three years.

PAUPERISM. TABLE No. 5.

The Result in Plymouth for three years.

1 County 3 years	Whole No Poor 1836	Do 1837	Do 1838	Intem 1836	Do 1837	Do 1838	Foreign 1836	Do 1837	Do 1838	Exp's 1836	Do 1837	Do 1838
Plymouth	391	636	685	80*	201	291	19	35	35	14,995	17,618	19,514
Increase from 1836 to 1839		295			211			16			$4,519	

*Not stated.

This is one of the most rigid prohibitory Counties, and yet how unfavorable the result.

PAUPERISM. TABLE No. 6.

Boston Alms House.

Year	Whole No of Poor	Intemperate	No of Licenses
1835	1,476	1,107	300
1836	1,270	825	385
1837	1,443	1,083	360
1838	1,424	1,063	403

Showing in the city, were there were most licenses and freest sale, a decrease since 1835 of 52 poor in the Alms House; a decrease of 39 intemperates; an increase of but $353 in expenses; and an increase of 108 licenses. And all this improvement against an increase of 380 foreigners.

These are the general aggregates, by State and County estimates, and I ask you, Gentlemen of the Committee, if, with your preconceived notions on this subject, derived from the loose and hitherto unquestioned statistics of the moral reform agents, you are not prepared to say with one of these

agents who opened the reply, that "the Statistics on Pauperism are indeed overwhelming!"

But I have not, said Mr. H. relied merely on aggregates. I have run out the minutest details; applied it to towns, and especially to every town held up here, as having *improved* in pauperism by refusing licenses. The result is uniformly the same as is here demonstrated.

PAUPERISM. TABLE No. 7.

Comparison of Pauperism and Intemperance, in Towns respecting which evidence has been given to the Committee.

	1835		1836		1837		1838					
Towns.	Whole Paupers.	Intem.	Whole.	Intem.	Whole.	Intem.	Whole.	Intem.	Expense 1835.	Do 1836.	Do 1837.	Do. 1838.
Randolph,	24	4	27	2	65	33	92	61	$1,032	1,354	1,750	1,833
Foxborough,	11	1	12	2	24	10	37	10	657	739	1,010	631
Dorchester,	No return	No ret'n	31	12	55	37	45	30		2,239	1,078	1,500
Braintree,	No return	No ret'n	No ret'n	No ret'n	20	2	19	4			900	850
Milton,	21	11	19	10	20	8	31	20	Not stated	Not stated		
Tisbury,	No return	No ret'n	No ret'n	No ret'n	18	0	17	0			842	900
Amesbury,	27	14	29	4	45	34	48	36	1,100	1,031	1,500	1,608
Bradford,	18	1	12	1	17	5	25	5	570	450	675	625
Beverly,	45	23	81	30	95*	71	82	61	1,200	1,200	1,669	1,716
Salem,	No return	No ret'n	290	186	555	500	580	522		9,900	9,400	9,800
Newburyport,	do	do	No ret'n	No ret'n	290	200	289	210			6,225	6,625
Lynn,	do	do	do	do	177	162	185	175				
Charlestown,	do	do	do	do	351	307	358	159			10,000	12,000
New-Bedford,	161	70	117	56	338	296	386	320		3,000	5,242	5,450
Middleborough,	52	11	45	8	49	17	56	18	1,078	1,071	1,254	1,300
Sandwich,	18	3	22	5	28	6	48	17	850	1,150	1,200	1,200
Plymouth,	26	9	29	9	56	14	67	21	1,476	1,500	2,500	2,488
Gloucester,	No return	No ret'n	81	20	143	86	139	91				
Quincy,	No return	No ret'n	23	11	38	20	33	25				
Northampton,	74	39	70	34	121	93	105	20	500	1,229	1,500	1,600
Roxbury,	100	47	93	49	112	45	97	20	Not given	Not given	1,375	1,325
Taunton,	No return	No ret'n	No ret'n	No ret'n	350	306	365	274			4,162	4,315
Lynn,	No return	do	do	do	177	162	185	175			5,503	7,600
Brighton,	No return	do	do	do	10	1	6	1			745	600
Barnstable,	29	9	24	3	50	9	44	3	1,240	950	1,500	1,800
Hingham,	40	18	41	17	63	23	66	26	1,209	1,445	1,670	1,778
Scituate,	48	23	45	13	77	24	80	60	800	800	1,100	1.567
Abington,	20	12	15	9	34	30	50	41	602	651	798	900

*16 Foreign.

The same results follow from 35 towns, taken promiscuously, all over the state. The figures show that in the towns where licenses have been hardest contended against, and prosecutions most persevering, there is a relative increase of the *whole number* of poor, and the expenses of their support, with a corresponding increase of intemperates. The reverse will be very generally found, on comparison, in the licensing towns. Can this be accidental.

On which side then is the pauper argument? It is enough for us to show a doubt as to the beneficial effects of this Act upon pauperism. The other side is bound to prove it. They fail, and we demonstrate the negative of the main position on which the whole pretence for the continuance of this Act rests.

Should it be attempted to obviate the effect of this perfectly astounding disclosure, as to the years preceeding 1837, from the fact that before that time the poor were classed as temperate and intemperate, not including wives and children of intemperate persons ; the answer is, that there was another large column in those years, under the head of "not stated ;" and even if all these were added to the intemperates, an increase of pauperism and intemperance would still be shown in the prohibiting counties.

But the same rule must apply to regulating as well as prohibiting Counties, and this supposed increase, by adding women and children, is no answer as to the comparatively greater increase of paupers and of intemperate paupers, in the prohibiting Counties. Neither does it touch the fact of the increase of the whole number, and of the expenses of paupers, nor in any way apply to the comparative returns of 1837 and 1838.

Another important fact comes in. There is an increase of nearly 1000 paupers in 1837 over 1839; and yet 1837 was the year of pressure and distress, when labor was driven from its means of support; but in 1838, business revived, and the able bodied who had sought refuge in the Alms House, or been aided by the overseers, were again able to provide for themselves. Consequently there would be less poor supported in 1838, growing out of the depression of business and labor, than in 1837.*

So far then as the pauper argument is concerned, if refusing licenses is the test of Temperance it would be easier from actual statistics to show that *Temperance* increases pauperism, than that Intemperance produces that effect. The result is wholly unexpected, and yet it is soundly philosophical. There is something at the bottom which those who have reasoned on the surface have overlooked. It is a law of human nature, higher than all human laws. Force produces re-action. The class of men most liable to pauperism, but who can sustain themselves by labor under ordinary circumstances, will be the more eager to procure their accustomed indulgence, the more severe the laws are against it; and as secret indulgence is always more seducing than open, they will drink the more, the more the laws are made to restrain them. This operation of all sumptuary laws may be set down as an axiom in political economy.

In addition to these statistics which demonstrate that the Legislature has no ground for maintaining the force Act of 1838, upon the pauper argument; the evidence before the Committee, the increased importation in Boston, and the enormous sales to counties where prohibition has prevailed; all tend to the same point.

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* After this demonstration, Mr. Walcott attempted to get round it by hinting that in the prohibitory counties, the Overseers must have *exagerated!* If he is content with an argument which proves that the supporters of the Act will prevaricate to sustain it, and that the statistics of intemperance have been *over-stated*, for the "pious fraud" of deceiving the public, as to the truth of the matter; he is welcome to all the advantages he can derive from such gross jesuitism.

The Committee rejected the evidence as to the sales in Boston to be sent to Bristol and other counties, but the remonstrants gave as a witness, Captain Taber, who more than proved our rejected facts. He swears positively to 1216 barrels, or 48,640 gallons, which he freighted from Boston to New Bedford, in 1838. He admits another packet carried one fourth as much, which makes 60,800 gallons, besides what was sent by transient vessels; by land, and also in casks marked as wine and vinegar. The aggregate thus proved must exceed the 79,000 gallons shown by the books of merchants of Boston to have been sent to Bristol.

The result is, that this pattern Temperance County, with its law of prohibition, has in one year, consumed in a population of 58,152 * upwards of 79,000 gallons of spirits, which is *five quarts and one pint* to every man, woman, and child in the county.

Plymouth, another pattern county, with 46,253 * population, has also consumed 31,000 gallons, received from Boston alone, which is over *five pints* for every mouth in the county!

Nantucket, with 9048 population, has had 14,000 gallons from Boston, equal to *six quarts*, for every mouth in that county! And by the showing of the remonstrants' witness, (Mr. Bacon,) the town of Sandwich with 3579 souls, where he undertook to testify that none was used but by those *beyond moral means*, has consumed, in less than half a year, 2640 gallons, which is over *five pints* to each inhabitant. What a wide calculation in this witness! for either most of his townsmen are "beyond moral influence," or a few drink beyond all account! Both views are incorrect. There is no more moral community in the State, than that of Sandwich.

These facts will serve to show how little reliance is to be placed on the guesses of witnesses as to the diminution in the prohibiting counties; while the pauper argument has been directly reversed, and proves conclusively, either that the free sale does not increase intemperance, or that there is more consumed to make paupers, in the prohibiting than in the licensing counties.

The extent to which the zeal of some men will carry them against facts, was remarkably illustrated, by Dr. Alden, *of Randolph*, who most confidently testified that pauperism had decreased in his town, because drinking had; when the returns of the Overseers, for four years, exhibited exactly the reverse. Let that respectable witness learn to be less confident, in future, if he loves truth as well as temperance.

Judge Leland, who presented himself as a sort of Napolean, prepared to "*subdue the dealers*" in a campaign of eighteen months, was equally unfortunate. He declared that Foxborough was an example for any town in the Commonwealth, and there was no sale there. Yet in that pattern town, pauperism and intemperance have increased, while in *Dorchester* and *Quincy*, which Mr. Leland specified as places of free sale, pauperism has decreased. *Roxbury*, with all the facilities of Boston, of which it is virtually the suburbs, is the only town named in Norfolk, where pauperism has diminished.

The District Attorney, Mr. Huntington, was equally unfortunate and incorrect in his estimates. His pattern towns in Essex, have increased their pauperism much more than the towns he reprobates as still selling; and the town which of all others he selected to test the pauper argument, *(Beverly,)* makes one of the worst exhibits in the whole official returns to the Secretary!

Tenth. The remonstrants further contend that Alcohol is the great obstacle to all moral reforms, and therefore they must have this force Act to compel those whom they cannot persuade.

* Census of 1837.

We prove that if it be so, this Act will but increase the obstacle. But we also maintain that if this Act is to be pushed, there will be found in active ferment, a worse than physical alcohol to stimulate excited men to unjust and injurious acts,—the alcohol of bigotry and misdirected zeal!

Dr. Johnson has described the mad philosopher in Rasselas, as really believing that he controlled the physical elements. The gentleman who opened this cause for the remonstrants, (Mr. Crosby,) most complacently represented himself at the head of his Society, as controlling all the *moral* elements!

"*We* must *contrive* to make the world *better!*" he exclaimed. "These great benevolent operations are under the direction of different Societies who are appointed to carry them forward, and *we* MUST HAVE a virtuous community." Meaning, no doubt, "peaceably if they can but forcibly if they must!"

If they *must* have it, of course they *must have* force laws to compel men to come into their creeds; and thus, in effect, we are told, that the moral reform associations claim to be a political power in the State, the supreme lawgivers upon men's beliefs and appetites, and the great moral regulator! This is in fact the political struggle now going on; whether these irresponsible Societies or the people shall control the Legislature.

This is seen in the secret movements of Temperance Societies and Conventions; an extraneous power, which has directly interfered in political action, and brought about and sustained this law, by a systematic course of dictation and intimidation, to operate upon the Legislature.

When before did Conventions assemble in the Capital, simultaneously with the Legislature, and pass resolves in relation to a measure before that body, denouncing all who should oppose that measure as recreant to their oaths and to virtue! Such was the political action of the temperance Convention of last year which got up this obnoxious Act, and such has been their course at this session, to force the Legislature up to sustaining the law. A high public officer, the District Attorney of Essex, was the instrument used to denounce all men in the Legislature who should not come up to the standard of the new creed in voluntary morals; and he comes here as a witness to enforce the instructions of the Convention upon the Legislature: a Convention, Mr. Chairman, of professing Christian men, who did not hesitate to pass a vote of censure upon the author of Christianity himself! for they impiously declared that it was *immoral* to manufacture or sell intoxicating liquor to be drank; when they knew that the first miracle of the Saviour was to make intoxicating liquor out of water, to be drank at a feast!*

Neither did the Saviour seek to promote one good alone, as do the modern moral reformers who absorb all other benevolent objects in this war upon alcohol, in particular forms, and when used by particular classes of men. The purest moral reformer the world ever saw, went about

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* It was said of the Pharisees of old, by him who spake as never man spake,—"The Son of Man came eating and drinking, and ye say of Him, behold a gluttonous man, and a *wine-bibber*, a friend of *publicans* and sinners; but wisdom is justified of her children."

The modern Pharisees, who thank God that they are better than other men, (because they drink wine and try to enforce a law to prevent a laboring man tasting gin,) need not lay the flattering unction to their souls, that they swallow no alcohol. A letter from a French House, who had been applied to by a Boston firm to send some pure wine, the freest possible from alcohol, was laid before the Committee, in which was this statement:

"We have not altered the prices of our Spanish wines, (three grape and two grape.) The only difference between the two qualities is, that the first was *reinforced* with *ten gallons oil proof brandy per pipe*, and the second with *only six gallons*."

doing good to all and denouncing none but hypocrites; inculcating the doctrine of encouraging all the virtues, but above all, *charity*, and not persecution. It is this makes the perfect man. Contemplating but one vice and studying but one virtue, makes the bigot.

Lastly, The supporters of this Act maintain it must not be repealed, because the *women* are for it. This statement is deceptive. The women, as they ought to be, are for *temperance*. Without looking into the merits of a particular law, they desire to secure that *end*, and leave the *means* beyond moral influence, to the men, who as yet make the laws. Hence the thirty thousand females who have signed memorials for the law, are merely *duplicates* of the signatures of their husbands, fathers, and sons.

I am pleased with this expression of their opinion, and I honor their motives. They ask the Legislature to suppress intemperance, if it can. They do not mean to ask for an unjust and arbitrary law to favor the rich and restrict the poor, and the effect of which will be to increase intemperance. They are sincere, but they are deceived.

I warn these men, said Mr. H., who have dragged their women and children into this party conflict about laws, that if this Act be persisted in, the time will come when some of these women will upbraid them for the ruin of fathers, husbands, brothers, sons, brought about by the increased intemperance, of which this contest and this law will be the cause.

I rejoice, said Mr. H., that there is not a female signature against this Act. I am glad that the memorialists have not brought in their women and children, who might have trebled the names on that side.

In view of the whole investigation, then, what is the conclusion for fair minds to arrive at? Should a doubtful experiment be persisted in on a false, abstract theory, to sustain the new doctrine of prohibition; or should the settled maxim be again resorted to, that so long as the article and the appetite exist among us, wholesome regulation by law, and moral influences, are the only true promoters of temperance?

Would it not then, be the part of wisdom, of magnanimity, to admit the error of this hasty step in legislation? to retrace that step; to go back to wholesome regulation, and there remain, until an united community demand a change, or the evil ceases to exist, by common consent, which will be higher than all law.

This Act, if continued in existence, must be enforced, or openly violated. It can never be enforced, or if at all, only by a constant and bitter conflict. It cannot be violated, without doing more injury than would regulation and license. May not the memorialists, then, confidently hope, that the Committee and the Legislature, before insisting upon sustaining this Act, will carefully deliberate, and wisely count the cost?

February 19.

The sitting of the Committee was occupied by the closing argument of Peleg Sprague, Esq., for the remonstrants, which has been published in pamphlet. The 20th was occupied by Franklin Dexter, Esq., in closing for the memorialists, which terminated the public hearing.

MR. DEXTER'S

CLOSING ARGUMENT FOR THE MEMORIAL.

Mr. Chairman. By far the greater part of your time has been taken up by the Remonstrants, in stating the evils of which Intemperance is the cause. It was early announced to them by the memorialists, that upon this point there would be no controversy. But it really seems as if it were the design of the Remonstrants to drive them to this, as the battle-ground, by the extravagance of their statements. But the memoralists will not thus be diverted from their object. The question they have submitted to the Committee is simply whether this particular law involving a new principle of legislation is an expedient measure for the restraint of Intemperance. They will not, by entering into a controversy as to the extent of the evil, give their opponents the advantage of assuming to themselves the name of the Temperance party—a name which indicates a division such as does not exist in the Commonwealth.

But though this matter may pass without dispute, it is impossible not to notice the other proceedings of the Remonstrants, which seem to have been directed rather to excite than to enlighten the minds of the committee and of the public. I may safely say, that upon no other occasion has a committee of this Legislature heard such violent denunciation of individuals, and personal abuse as has been poured out upon the most respectable of these memoralists by one of the opening counsel for the Remonstrants. If the individual who used this language were an unaccredited volunteer in this cause, his want of decency would be unworthy of remark, but whatever be his own claims to consideration, he has stood here for hours, the acknowledged counsel and advocate of the Remonstrants, and his ribaldry has drawn out neither rebuke nor apology from those for whom he spake. Really, sir, it seems as if the memoralists were to be driven from the exercise of their mere constitutional right of petition by the fear of personal injury. Upon the simple question whether a particular law designed to promote a cause, of which they profess themselves to be friends, is or is not an expedient and constitutional exercise of power by the Legislature, the memoralists are not permitted to state in the most respectful terms their wishes and reasons without being assailed with opprobrious epithets and accusations. The memoralists come here in the most unexceptionable manner: they put forth in print the grounds of their petition, and they employ counsel to enforce them, who certainly cannot be accused of having uttered a single personal remark, or made a single appeal to popular feeling. They come here calling themselves friends of temperance, and as such, asking for a repeal of this law because they think it a violation of the rights of individuals and dangerous to the common cause—and they are met by those who differ from them in their opinions, with derision and insult. Their pretensions to what they solemnly assert to be their principles, are fiercely denied and derided; they are insulted in this crowded Hall, by the most false and abusive

accusations. The privacy of domestic life is invaded, and even the sanctity of the grave is not respected. The living—the honored and venerable living, whom it has pleased Heaven to try with affliction, have been taunted with the infirmities of age; and the dead who had lived a century unreproached, and who might have passed into Heaven almost without a change, has been stigmatized as but a later victim to intemperance. Of these memoralists, the poor are sneered at because they cannot write well enough to please the taste of the counsel, and the rich are ridiculed for their pretensions of caring for the poor—Sir, was a great moral reform ever accomplished by such means?

But not only have the Remonstrants attempted thus to excite popular indignation against the memoralists, but the most extraordinary measures have been adopted to apply an external influence to the deliberations of this Committee. We have seen three Temperance conventions held in the city during this hearing—held not in the regular course of the respectable societies that meet periodically on this subject, but specially called for the purpose of operating upon the decision of this Committee.

Sir, I beg the committee, I beg the respectable portion of my opponents to consider how fatal is this sort of influence to freedom of debate and decision in a Legislature. The Jacobin Clubs of Paris were not more purely revolutionary in their character, whatever may have been the difference in their objects than these attempts to overawe the Legislature by strong exhibitions of popular feeling. I cannot but fear as well as deprecate the effect of such measures. I cannot compliment this committee by pretending to think them superior to their influence—no popular body can be superior to it. The strong voice of a multitude will alarm some and persuade others —The voice of a mob is easily mistaken for the voice of the people—and whatever may be the personal respectability of these individuals, or the purity of their motives—they are acting the part of a mob when they meet in such associations and anticipate in the language of vehement denunciation and resolutions the decision of this question. It is the spirit of a mob to oppose the force of numbers and of noise to that of reason. Sir, this Hall is open for all they and their Counsel have to say in favor of this law—Here the question is to be decided and here it ought to be heard and here alone. Your committee have listened with unexampled patience to all their evidence and arguments relevant and irrelevant. If they choose to be heard elsewhere and before assembled multitudes while this question is pending, what is it but invoking popular excitement to overwhelm the Committee? Why do they call great meetings together to resolve upon that which you alone can decide! Sir, it is excitement that they seek—it is agitation—and for one, Sir, I do not believe in deciding great moral or political questions by excitement and agitation. I believe it may be accomplished, but I do not believe in its usefulness or propriety.

But, sir, let us come to the real question before the Committee. Is this particular law an expedient measure for the restraint of intemperance? The Memorialists ask for its repeal upon two grounds: because it is unconstitutional, because it is inexpedient. Upon the first of these grounds, I shall not farther occupy the time of the Committee; the argument has been fully and ably stated and needs not to be repeated. The consideration, of this question, belongs more particularly to a judicial tribunal, after a law has once been passed, and I shall not pursue it further. But I will briefly state to the Committee what is more proper for their consideration, that granting the power of the Legislature to pass the law, it cannot consistently with the settled construction of the Constitution, be carrried into effect against the importer of ardent spirits,

and that thus limited in its operation it will be quite ineffectual for its purposes.

The power to regulate commerce has been repeatedly decided to be exclusively vested in Congress; it belongs wholly to Congress and not at all to the States. In the case of Brown vs Maryland, a law of that State was held to be void because it attempted to impose a tax on sales of imported merchandize by the importer. The power to tax, say the Court, implies the power to lay a prohibitory tax, and to prohibit the importer from selling, would be prohibiting the importation, and that would be an attempt to regulate commerce, which no State can do directly or indirectly. Now this was the case of a tax on the wholesale dealer, and the direct decision of the Court went no farther than the necessity of the case required. The question will now arise whether the same reasons do not prevent the States from prohibiting the importer from retailing the imported article: when the Court was in that case pressed by the argument that the construction adopted would prevent the states from regulating the internal trade of their own territory and from raising taxes upon the property of its citizens, the answer was, that when the importer had mixed up his goods with the mass of the property of the State, they then became subject to taxation and regulation by the State—and as an answer to a particular argument, it was stated that this would be the case if the importer should *break up his packages*, and travel about with them as an itinerant pedlar—but no where is it stated by the Court, that by the mere breaking up of the packages, the importer's privilege is destroyed. It being then settled that the States cannot prohibit the wholesale of goods by the importer, because that would be a virtual prohibition of importing, how is the retail sale by the importer to be distinguished and made subject to the power of the State? Suppose a law were passed in express terms, prohibiting all importers from selling any goods by retail, can any one believe after the decision of the case of Brown and Maryland, and in view of the reasons of that decision that such a law would be constitutional? If as the Court says, the power to import implies the power to sell, does it imply only the power to sell by wholesale? What ground is there for this distinction? A prohibition of the wholesale trade would not necessarily and totally preclude importation, because the importer could still retail—and so a prohibition of the retail trade would still leave the power of selling by wholesale, but the principle is that the importer shall not be prohibited from selling his goods As to the time and manner of sale, he is subject to all wholesome laws of regulation, but no law of prohibition can be applied to him; to prohibit retailing is as much of an encroachment upon his privilege of sale, as to prohibit the wholesale; either can be carried on without the other, but both are so far necessary to the freedom of commerce, that the State can no more prohibit one than the other. The true principle of the decision is found in these words—"when the imported article becomes mixed with the common mass of property in the State, then it becomes subject to State laws." Now when does imported merchandize become mixed with the mass of other property? Not surely by merely opening the casks or boxes—it is still as distinctly the imported article as before. You cannot prohibit the importer from selling a box of sugar, you cannot tax him for the right to sell it. Now suppose he opens the box and sells the sugar by the pound from the box, can you prohibit him from doing that? Has he by opening his box, without removing the contents, "mixed them up with the mass of the property in the State?" Surely it is as distinctly the imported article, though half of the sugar may have been taken out. If the power to import implies the power to sell, why

may he not sell it in parts as well as in the whole? Or suppose the importer of a 15 gallon cask of brandy puts a spigot into the bottom of it and draws off the brandy for sale by the pint; has this liquor that has never seen the light, been by the mere insertion of the tap, mixed up with the property of the State? or is the pint that is drawn out for his customer, so mixed up by being drawn out from the cask that he cannot sell it? It is plain that no such sophistry was intended to be used by the Court. The true principle of the case is, that the importer has acquired by the act of importing, a personal privilege to sell; he acquires under the act of Congress a paramount right to sell, subject to regulation, but not to prohibition by the State. What then is prohibition and what is regulation? Requiring a license and a tax, was held in that case to be virtually a prohibition, and not a regulation merely, because all were permitted to sell, but subject to a tax which might be increased until it amounted to a prohibition. But any state law which is fairly a law of mere regulation, like the old license law, may be applied as well to the importer, as to the purchaser from him. The State has never parted with its right to regulate its own internal trade, but it has completely surrendered all power of regulating external commerce. It may therefore prescribe what rules it sees fit for the mode of conducting sales, as well by the importer as others, but it cannot prohibit or limit his right to sell that which the law of the United States gives him a right to import for sale. It may not always be very easy to distinguish the cases—because regulation may be made so strict as to amount to prohibition, but when a law is avowedly prohibitory in its object and intent, it is plain that it cannot be applied to the importer.

Now the law under consideration is most unquestionably a prohibitory act. It contains a new and odious feature not to be found in any of the former laws, for it in terms, and absolutely prohibits the retail trade in spirit for drink. It prohibits it to all and under all circumstances. Upon this point indeed our adversaries are not agreed among themselves. One claimed this novelty as a great merit in the law, and the other as strenuously denied it. We take no admission on this point, there is no need of it. The former laws distinctly permitted certain licensed persons to sell spirit at retail for drink, this law prohibits any and all persons from so doing. There is a clear difference in principle. One law declares the trade lawful and licenses it: the other prohibits and punishes it altogether. It is idle to say that the principle is the same in both. A very feeble attempt has been made to assimilate them by stating the old law as a prohibition to all but the licensed persons. But let the gentlemen who use this argument adopt their own mode of illustration and see how the question will stand. Certain vices which I need not here particularly name, are now prohibited by law. Suppose a new law were passed licensing certain houses for the indulgence of them, would the gentleman say that this introduced no new principle? would they consider the Legislature who should pass such a law of sanction and regulation as acting upon the same principles with their forefathers who denounced and punished the same vice in every place and under every form? I do not agree that the cases parallel, though they have been so stated in another part of the argument where they clearly are not so as I shall have occasion to show, but the difference between them does not apply to this particular question. To prohibit a practice altogether, and to permit it to certain licensed individuals, is equally a difference in principle of legislation, whether the practice be in itself a crime or not, but whether it be a crime or not, is a most effectual ingredient in the question of the expediency of its total prohibition. I need not pursue this argument. No one can

seriously doubt that this law presents an entirely new question of princi ple, if the quantity in which alone the sale is permitted, be admitted practically to operate, or to be intended to operate as a prohibition. The intent to prohibit makes the difference; whether it is successful or not is immaterial to the principle. That the intention is not to regulate, but to prohibit, the drinking of ardent spirit, neither of the counsel has been uncandid enough to deny. Indeed the whole argument proceeds upon the supposition that it is so. The selection of fifteen gallons as the limit, clearly shows this, as that quantity is the least in which by the laws of the United States brandy can be imported. It was therefore the highest limit the Legislature could assume without coming in conflict with the right of the importer of the liquor, as settled by the Supreme Court of the United States. As far as they could go, therefore, without introducing a distinction between different kinds of spirit, the Legislature has gone entirely to prohibit the retail trade. This, then, is a law of prohibition, while the old License law was no more a law of prohibition than the law requiring Auctioneers to be licensed, was a prohibition of auction sales. It attempts for the first time to prohibit the retail trade in spirits as drink, to all persons and in all places. And although the law should be thought, notwithstanding the other objections, to be constitutional, it is still inapplicable to the case of the importer.

Now of what value is this law if every one can retail at pleasure who can import 90 gallons of rum from the West Indies, or 15 gallons of brandy from France? But the difficulty does not stop here. Congress has the same exclusive power to regulate commerce between the States as with foreign nations, and that commerce may be carried on by land as well as by water. Following out the principles of the case of Brown and Maryland, any one who imports a barrel of New England rum from a neighboring State, by land or by water, may retail it at pleasure. If the principle be, as stated, that to restrict the sale by the importer is an encroachment on the power of Congress, and that this privilege continues until the property loses its distinctive character as an import, it is plain that any one may easily qualify himself to be a retailer. I am aware of the difficulties this doctrine may seem to involve; but there would be on the other hand great difficulties in any other construction. If one State could prohibit the retail trade in the products of another State, they might in that way carry on the commercial warfare which the Constitution intended especially to prevent. Suppose that South Carolina should choose, in her zeal against the tariff, to exclude our cotton cloth from her territories, could she not virtually accomplish this by prohibiting the retail trade in them, if such a prohibition were not restrained by this construction of the Constitution? But this construction prevents her from imposing any such prohibition on the importers, so that she could at most, only make it more inconvenient to obtain the goods by any law that she could pass. It would seem, therefore, not only that this privilege of the importer from another State comes within the principle of the decision, but that it is quite necessary to prevent the States from virtually legislating to exclude each others products from their respective territories.

But, Sir, I do not consider the constitutional difficulties to be the strength of the memorialists case. The injustice and inequality of this law, and its utter inexpediency as a temperance measure, seem to me still stronger objections before the Committee.

The memoralists contend that this law is unequal in its principle and its intent. It is one law for the poor and another for the rich. It makes the worst possible distinction, that of one who can, and one who can-

not afford to be intemperate. It denies it as a luxury to the poor and permits it, to the rich—instead of denying it to all as a criminal indulgence. If a man may not buy a single gallon of spirit drink for why should he be allowed to buy fifteen gallons? The only answer that can be given is, that it is more difficult to buy fifteen gallons than one, and that therefore spirit drinking will be restrained and diminished. But why, and to whom is it more difficult to obtain fifteen gallons?—Simply because the greater part of those who drink are too poor to buy the larger quantity. As to those who can buy it, it is no prohibition at all—to those who cannot, the prohibition is absolute. Is this equal? It is to be observed that this prohibition is not aimed at dram-drinking in the shop. A minimum of a quart or a gallon would prevent this as well as one of fifteen gallons; but the design is to prevent its being bought and carried away. Now as fifteen gallons is a quantity that can be carried away without any great inconvenience,this law really operates in this particular only upon those who cannot pay or be trusted for fifteen gallons at a time. It prohibits all from drinking at the counter, but permits those to carry away liquor who can pay for it, and prohibits the same thing to those who cannot. As far as this law prohibits drinking at the counter, which is the great evil, in cities at least, it is equal to all. But so far as it restrains the buying to carry away, it takes the most odious and unjust distinction. It leaves to the rich sot unlimited liberty of intemperance, while it prohibits the poor from the most moderate indulgence. Now Sir, this is not regulation—it is a most unequal probibition. Various examples have been put by the Remonstrants to show that this law is not more unequal than others; but there cannot be found an instance in the whole statute book of such inequality.

In the first place it was said that the old license law was as unequal as this because though all could buy under it,yet all could not sell–but the distinction is very plain. The right of regulation is universally admitted,but there can be no regulation without restraint, and that restraint must be partial—all cannot be licensed retailers or auctioneers, but then all have an equal chance and right to be so. The rich man is not preferred to the poor man–bonds are required it is true which may be more inconvenient to the poor than to the rich man. But the object of requiring bonds is not to disable or discourage the poor from being retailers, but for the necessary security of the public against disorder. Then it is said that the Tariff is a law as unequal as this because it enhances the price of broadcloth so as to place it beyond the reach of the poor. But what inequality is there in this? All duties and excises necessarily enhance the price of the article to the poor as well as to the rich; but to avoid this unequal operation, the higher qualities of it are taxed more in proportion than the lower. The poor man pays on the coarse fabric which he must wear with or without a tariff a less rate of duty than the rich pays on his finer cloths. The rich pays a higher tax upon his dress than the poor man fully in proportion to its better quality. Nay,the very object of the tariff and its actual operation, has been by encouraging the manufacture of the coarser fabrics to reduce their price below what it could be imported for. Under its operation the poor man now gets a shirt for half what it used to cost him, and to enable him to do so the rich man pays an enhanced price for every article he wears. Every provision of the tariff is especially favorable to the poor. When gentlemen say there is no inequality in this law let them only apply it to some other article of consumption—Suppose a law made to prohibit the retail trade in cotton cloth. Fifteen gallons of rum it is said costs $6, and we are asked where is the poor man that cannot find $6 to buy it with. 'Not an able bodied man in Massachusetts' it is said 'who cannot at pleasure purchase this quan-

tity.' Sir, this sum of $6 will buy nearly a hundred yards of cotton shirting, but would it be no hardship upon the "able bodied" poor man to be restrained by law from buying less than 100 yards of shirting? Would $6 in that case be thought so very trifling a sum as to make the inequality nearly nominal? "Not one of that class of able bodied poor" says the Counsel "would be disabled by this law from purchasing spirit." I do not wonder Sir that the poor of other countries think this a land of ease and plenty, when the starving creatures hear my learned friend solemnly state that not the poorest laborer in Massachusetts but what has his pound sterling in his pocket to purchase spirit "at pleasure." I wish the fact was so as to the necessaries of life. This paltry sum of $6 that every able bodied man can spend "at pleasure" for rum, would relieve many a poor family in the state from want and nakedness. Understand me, Sir, I do not claim for the poor or for the rich the same facility for buying rum as for buying food and clothing. Tax it if you think it ought to be restrained, tax it heavily, if you please, but tax it proportionally—put the same tax on the poor man's N. E. Rum or Whiskey as on the rich man's Cognac and Jamaica. Give no facilities to the rich and impose no disabilaties on on the poor—Deal in your wisdom with the whole subject but deal equally to all. And if you will pass prohibitory laws prohibit every one alike.

There is one more example of the supposed inequality of the law, which has been dwelt on with great emphasis, as an argument for this; it requires especial notice for the boldness of the language in which it was put forth, and for its utter unsoundness. I will state it in the language of the counsel whom I select as representing the opinions of the sounder portions of the Remonstrants.

" Take even that desire which has been imparted by the Author of our Being, for the continuation of the species, not an artificial, but a natural and necessary appetite. As to this too, you give the law. What you permit is *lawful*, what you forbid is *unlawful*, and you absolutely inhibit its indulgence, unless a man will take to himself a wife to be supported, not fifteen years merely, but for life. Is this obstacle to indulgence equal to the rich and the poor? By the one it is easily overcome; to the other it is often insurmountable. And would these gentlemen ask you to deal out matrimony in smaller doses; to render it lawful for a man to take a wife for fifteen years, or fifteen days!" Again—" may you not restrain appetite wherever the good of society requires it? A wretch has an appetite for the wife or daughter of the Remonstrants!" &c.

I do not like this topic as a subject of public discussion. I would, for the sake particularly of some whom I see among this audience, gladly avoid it. But it has been repeatedly stated as an argument in favor of this law, that the brothel and the retail shops stood on the same ground as public evils. And more especially, as the argument is now put forward in its most specious form, by the ablest counsel of the Remonstrants, it must be answered in plain language. I take it Sir, that those who use this last argument, believe it sound, or they would not utter it Now what is it briefly stated; just this, that you have the same right to restrain the drinking of spirits, that you have to restrain fornication and adultery—nay the language used, would as well include the crime of rape. The same right to restrain! Then you may restrain by the same means; you may punish the one as well as the other. I do not mean to the same degree—but they are equally proper subjects of punishment. And this is the answer seriously given to the complaint that this law undertakes to regulate the appetite? Why, what possible analogy is there between the two cases? Will such extravagant overstatements convince the sober minded people of this State? Because you can hang the wretch that brutally violates your wife or your

daughter, can you fine and imprison the man that mingles a drop of ardent spirit with his water? I know this law does not attempt to punish the drinking of spirit; but the argument claims the right to do it—it puts it plainly on the same ground as to that right with the most attrocious crimes. And this argument has been stated here over and over again, in every variety of form, as if it would bear the severest scrutiny. But is there not this plain distinction between the cases, that one is a crime and the other is not? But both, says the counsel, are appetites, and if one may be restrained by law, so may the other. Sir, are the appetite for crime and the appetite for food the same things? both are appetites—that is, both are desires, and the argument is that if one desire may be restrained so may another. Now Sir, is it nothing that the voice of God has forbidden one, and that the other is a crime only, when made so by this very statute!—"What you permit is *lawful*, what you forbid is *unlawful*." The law then is to be justified by itself—it first makes the indulgence of appetite a crime, and then claims the right to punish it because it is a crime. Sir, there is a distinction between right and wrong established by higher authority than that under which you sit here, and the analogy that confounds the law of God and the law of the Legislature, is of very little value. As to the one the power of the Legislature is simply declaratory so far as it points out the right and the wrong, as to the other it makes a distinction purely of its own. Fornication, adultery and rape have been declared to be crimes by the voice of God, and no legislation can make them lawful—restraint of these is not only the restraint of appetite, but is the restraint of crime—the restraints of this law are restraints of appetite merely. Will the gentlemen compel me to state the true analogy of the two cases? and if I must offend against propriety in so doing, I do it not voluntarily, but because our adversaries have compelled me to it. The appetite for spirit is compared with the sexual appetite, and the law which in effect prohibits the use of spirit to the poor, is said to be of the same character with that which prohibits to all the irregular indulgences of the sexual passion. Now Sir, having shown the dissimilarity of the cases, as stated by the remonstrants, let me show them what law relating to the sexes would be analogous to this relating to the use of ardent spirits. This law restrains the use of ardent spirits not before criminal—that is, it restrains all use of it. Suppose a law were passed restraining, not the irregular indulgence, but all indulgence of the sexual appetite. Suppose the Legislature should undertake on this subject to restrain that which God has permitted, and the regulation of which has been left to man's private discretion. That would be what the memorialists mean by a law in restraint of appetite—not only of an appetite lawful in itself, but of a lawful indulgence of it. Would the remonstrants acquiesce in such sort of legislation upon their domestic affairs? And if they complained of it, would they be satisfied with being told, that as the Legislature has the power to restrain the appetite for being drunk, and this is but another appetite, this may be restrained too? Would they not see in such a case, the wide difference between a simple appetite and an appetite for crime?

Equally fallacious is the argument drawn from the institution of marriage, as it affects the rich and the poor. A prohibition of selling that quantity of spirit that comes within the means of the poorest, is compared to the law prohibiting fornication and adultery to those who cannot maintain a wife for life. We are tauntingly asked if matrimony as well as spirit should, for equality's sake, be dealt out in "smaller doses," that the poor may enjoy it as well as the rich. Sir, this cannot have been as seriously said, as the occasion required. Do the gentlemen see nothing in the institution of matrimony but licensed lust? Do they not see

the difference between a promiscuous and beastly appetite, and the most refined passion of our nature? Do they consider a wife as a mere paramour for life? Do they count for nothing that sentiment, the tenderest of all associations, that binds hearts as well as persons together for life, and makes them dread death less for its own terrors, than because it divides them? "Smaller doses of matrimony!" What can those think of matrimony who talk thus of it in argument—or even in jest, if they are jesting on so serious a subject? Sir, they do not mean matrimony; they mean something very different from it; and when they ask if we would have smaller doses of that thing dealt out, we answer we would have it in no quantity whatever. They might as well ask us if we would have drunkenness dealt out in smaller doses; our answer to that, would be, that we want neither drunkenness nor lust, but we want rational liberty and equality for all, in the indulgence of the appetite, that God has made it innocent to indulge in moderation; and in both cases we want no legislative interference in the regulation of it.

But besides the inequality of the law in prohibiting the sale of small quantities of spirit, it is also grossly unequal in permitting the sale of wine in any and all quantities. Wine is an intoxicating liquor as well as rum, but wine is the drink of the rich man, and rum of the poor. Wine is not, nor ever can be, in this country, the drink of the poor—our own soil produces none, and the charges of importation make it too dear for them. Now, Sir, this law leaves the rich man the unlimited use in the smallest quantities of his refreshment or his poison, if the gentlemen who lecture on this subject, choose to call it so, and denies to the poor that which alone he can afford to buy. In regard therefore to kind, as well as to the quantity permitted to be sold, it is unequal. A gentleman and a poor man may meet in a tavern at night, having travelled through the same storm during the day—cold, wet and weary—the gentleman calls for his glass or his bottle of wine, and the landlord is happy to serve him in any quantity. The poor man calls for his glass of rum and water, and is told that he cannot have less than 15 gallons. Now Sir, even if it were true that every able bodied man in the State can pay for 15 gallons, it would be rather a hardship to have to pay for that quantity when he was travelling and could not carry it away with him. If he cannot pay for wine he must be content with water, even when exposure to wet and cold seems to him to require something a little more stimulating. No doubt my friends, Dr. Pierson and Dr. Channing would tell him if they happened to be present, that water was much better for him, but even if he could have their advice for nothing, he might still think it a hardship that he could not take his own, as to what he should eat and what he should drink. Not even in case of sudden sickness, can a taverner sell a glass of spirit, and not even the temperance doctors will tell us that there are not cases in which life may be preserved by it. To pass one moment from the irregularity of the law, look at the hardships it may impose upon every one. We all know that in country towns there is no apothecary, and the physician often lives at a great distance from the tavern—now if a feeble person in travelling actually needs a little spirit even as medicine, this law effectually prohibits his getting it. Under such circumstances, who would not feel that it was intermeddling with that which ought to be left to every man's own discretion?

I know of no law that will bear a comparison with it. It puts the whole community under guardianship, because the intemperate cannot be trusted with liquor. It denies to all the discretion of using that which none but fanatics can deny to be often useful, because some will abuse it. It is inconsistent with the whole spirit of our political institutions. It

would be absurd anywhere, but here, it is ridiculous. A people that are trusted by their Constitution with the complete power of self-government in politics, cannot be trusted with self-government in their diet. They may choose whom they will, every year, to make their laws, and administer them, and may even change their whole original civil compact of government at pleasure; and yet they cannot be trusted to buy what they choose to drink, lest they should drink too much of it. Sir, this cannot continue to be the law of this Commonwealth—the time will come, and very shortly, if it has not come already, when it will be seen to be a departure from the first principles of our government. I am not surprised that it should have been passed; because when all know that what is done this year may be undone next, no one fears to try even the wildest experiments. Such a law could only be passed in the very wantonness of liberty. That it will be repealed is certain, but whether it shall be now taken away before it has united itself firmly with other valuable laws, or whether it shall be suffered to remain until the whole system of legislation on this subject will go with it is a question of deep interest to the community.

But supposing this State law to be unobjectionable upon the ground of inequality in its operation upon different classes, and looking at it merely as a measure for the promotion of temperance, I will ask the attention of the Committee for a few moments to its probable effects.

Remember, Sir, it has not yet gone into operation: this is made a reason against repealing it; but, in my judgment, it is quite the contrary. After it has become the actual law of the land, there would be more reason for claiming for it what it advocates, call a fair trial—as yet it is no law at all, but it is to become such, unless sooner repealed, on the first day of May next. Repeal it now, and you have made no change in the legislation on this subject—no more than if the vote upon its passage had been reconsidered. Wait until next session, and you must meet all the evils of a change of legislation; you will then have to yield to an exasperated opposition—to an open contempt of the law; and to the resistance and disagreement of juries, what you now deny to reason and remonstrance.

It is an inexpedient law because it will not effect its purpose, and cannot be enforced. When I say it cannot be enforced, and when the Mayor of the city told you it could only be enforced at the point of the bayonet, it is not meant that a few individuals may not be convicted on the evidence of common hired informers—it is not meant that those will be rescued by force; but it is meant that nothing short of an armed police will put the law into effectual execution. For one convicted retailer hundreds will violate the law with impunity. See the difficulty of the case. In the first place, who will be witnesses against the offenders? No one—unless your temperance agents can train and discipline a band of spies and informers as standing witnesses; will they do that? or will they degrade themselves to the dirty office? Next, how can you expect a jury to convict under this law? In such cases the jury are to judge of the law as well as of the fact—they have a right to judge of the constitutionality of the law as well as of its application. It would not only be the right but the duty of every juryman who should be satisfied that the law was unconstitutional, to return a verdict of not guilty, whatever might be the evidence. Jurors are sworn to return a true verdict according to the law and the evidence. The constitution of the United States is the supreme law of the land—next in authority to that are the statutes passed by virtue of it, and if this statute seems to him to be in conflict with any of the rights secured by those instru-

ments, a juror has a right, and it is his duty to refuse to convict upon it. I do not mean that such a conclusion should be hastily adopted by jurymen—but they will be addressed with the same arguments you have heard here, and is it not reasonable to suppose that at least one man will be found on each pannel who will be willing to be convinced by them. Here are 20,000 memorialist who now declare opinion! and one dissenting juror will prevent a conviction. Then that come a conflict between courts and juries—new and unconstituti will modes may be adopted to exclude those hostile to the law; the monal ty of the law will be brought into contempt, and courts of justiceajes- become the scene of angry debate, and perhaps, in the end the judiciary will be sacrificed to the popular feeling. One thing is certain—opposition to this law will increase instead of diminish, unless all violation of it can be put down at once—If a contest can be carried on by the opponents of the law, they will gain strength every day. Evil disposed per sons will rejoice in the scenes of disorder which it will create, and good citizens will be tired of a warfare that keeps the public mind in agitation. It is in vain for the remonstrants to arrogate to their own party all the respectability and virtue of the State, and to class all their opponents among the intemperate and the disorderly. Among the names in this memorial, are the best of our citizens—sober-minded, religious, and peaceable citizens—men of property—men of influence. This is no cause in which such men will give their names for asking. The course of the memorialists is a responsible one; it implies deliberation and conviction—it commits the signer to an opinion that he cannot disavow—while on the other hand the remonstrance is put forward as the act of the "Temperance Party," and thousands of signatures may be obtained for such a paper from those who care nothing for the matter, but think there can be no harm done by being over-virtuous. Look at their petition; it bears the names of thousands of women—why, Sir, what can these women know of the expediency of this law? Good souls! all they want is to have their husbands and brothers temperate, industrious men—but whether this will make them so or not they are as ignorant as children.

When I say that this law cannot be enforced in the courts of justice, I speak of what will happen from a knowledge of what has happened. Some of your Committee remember the old embargo law, and the numerous prosecutions under it. That was an unpopular law, and many believed it an unconstitutional law, but the courts sustained it and would not allow its unconstitutionality to be argued to the jury—but, Sir, the juries would not convict under it. Verdict after verdict of not guilty, was pronounced in the face of the clearest evidence of the fact. The law totally failed of operation—the sentiment of the people was against it, and the courts could not enforce it. Look too at the recent case of Abner Kneeland, tried three times before he could be convicted of the most obscene blasphemy; the fact was not denied, but the law was argued to be unconstitutional and oppressive, and if he had not insulted public decency, as well as denied the existence of God, he never could have been convicted.

Sir, the counsel has told us very emphatically, that the morality of a people cannot be maintained above the morality of their laws. It is equally true that laws cannot be maintained beyond the moral sentiment of the community. They rest upon that, and upon that alone for their support—the moral sentiment of a few enthusiasts will not do—nor of a mere majority—they must have the earnest support of the whole mass of good and intelligent men. When good and intelligent men are seriously

divided upon the expediency of a restrictive law, it cannot be expected to stand: and if gentlemen think there is not such a serious division on this subject, they greatly deceive themselves. Strong as the memorial is in good names, they do not see there one-half the strength of the opposition to this law. A stronger influence exists in the silent opinions of men whose age, office, and circumstances, prevent their names from appearing here. The support of the law you hear enjoined in the most public manner. You have on one side of this question greetings in the market-place, and prayers standing in the corners of the streets, but you will feel on the other, the strong current of sober opinion revolting from these Utopian schemes of radical reform in morals by the terrors of the law.

But suppose you can enforce it—that is, suppose you can suppress all public violation of it; will the cause of temperance be promoted by it? Will pauperism and crime disappear before this mighty engine of reform?

Sir, upon this point we have example as well as theory—we have facts that are better than all conjecture. By the unwarrantable and illegal construction put upon the law, authorizing the County Commissioners to license "*as many*" retailers as they thought the public good required, in certain Counties, these officers have undertaken to be more virtuous than the law, and have decided that the public good requires none at all. The consequence has been in those counties, just what this law proposes for the whole Commonwealth—complete prohibition of all retailing. And Sir, this Commissioners' law has been tolerably well enforced, except in the very large towns; much better than your law ever can be; because it is a law enforced by men chosen by the people of the county for the very purpose—the clear will of the majority had been expressed in the choice of Commissioners, and the people know that the same question will be open at the next choice. They do not feel it as a law, but as a temporary regulation always in their power to repeal, but even that law has been openly disregarded in New Bedford, where we are told that rum is retailed about the streets in a milk cart. But what has been the effect of this regulation during the three years it has existed in those counties? Why, sir, we should not have dared to predict such a consequence: it has gone even beyond conjecture. No other sufficient explanation of the fact has been or can be given, but it is an indisputable fact, that in those counties where licenses were given, crime and pauperism have either diminished or at most increased, but about in the ratio of the increase of foreign population: while in those counties where the prohibitory system has prevailed, the system now urged upon us for the whole Commonwealth, crime and pauperism have made the most frightful advances. There can be no mistake about this, the fact is not denied, it stands upon official returns. How is it accounted for, if it be not the legitimate consequence of this system? They say it was the hard times: pray, which way did the hard times work? times were as hard in Boston as they were in New Bedford. Yet crime and pauperism increased in New Bedford, and diminished in Boston. It is said that the sea-board towns suffered particularly by the hard times, and that the prohibited counties all bordered on the sea. But again, sir, is not the county of Bristol a sea-coast county? And is not New Bedford a great sea-coast, commercial town? Again, it is said that the influence of "Boston the great reservoir" poisoned the more virtuous counties. True, Boston did supply them with immense quantities of spirit. Incredible quantities were sent to Bristol County, and to taverners and retailers, to be used there in violation of the law.—But do the gentlemen think that if they subject the whole Commonwealth

to this restriction, some other "great reservoir" will not open? If New Bedford can get spirit from Boston, cannot Boston get it from Portsmouth, from Providence, or New York? Again they account for it by saying that the general law of the land made it reputable to drink, because it provides for licenses "for the public good." And do they think by this law to change the moral sentiment of the community. Do they think men drink rum "for the public good" when the law declares it to be so and will leave it off when the Legislature changes its mind on the subject. Really, sir, I have no faith that our community is so docile and ductile to the various changes in speculative morality brought about by Lectures and Conventions. I believe this is a question on which they will judge for themselves, be your laws what they may. Another reason assigned for the backsliding of the Temperance County of Bristol is, that the same *general law* being administered differently there, and in other counties "has caused a feeling of restlessness, or perhaps resentment to some extent unpropitious to its fair influence." Sir, I was much struck with the admission involved in this explanation. The people of Bristol, it seems, drink from restlessness and resentment, because they are forbidden to do it by law, while people in other counties are permitted to do it: And when you have forbidden the people of the whole State, will not they drink from restlessness and resentment? What difference does it make that other counties have been allowed to retail, while the people of Bristol by their own act have prohibited it? Are they angry with themselves? with the fair majority of their own county? and will they not be as angry with you and with members of other counties, who impose this restriction upon them by law? Sir, I doubt not the truth of what the gentleman states—that restlessness and resentment under restraint have aggravated the evil of intemperance in that county, and so it will be every where if this law prevails. When it was first said before the Committee, that under this law people would drink the more from a principle of opposition, the argument was derided, *drinking from principle*, was thought too ridiculous to be mentioned. But the fact was known to the Memorialists to have been so, and now the counsel for the Remonstrants avows it to have been so in their favorite county. The people of Bristol are angry, because the people of Suffolk can buy liquor while they cannot, and they drink twice as much out of spite. Just so, sir, it will be elsewhere. Opposition to the law will beget toleration of intemperance, and fifteen gallon kegs will be emptied and filled again in drunken carousals over this impotent attempt at restriction.

But when we object to this law, we are asked for a better. Intemperance, it is said, is increasing: what shall be done? Sir, this brings me to the last topic with which I have to trouble the Committee. When gentlemen ask us what shall be done. We ask them to look at what has been done, one of the greatest moral reformations that the world ever saw has—no, sir, I must change the word—had already been brought about upon the subject. Within the last twenty years an incredible change had been wrought in the habits of the people of this State—Intemperance, from being the peculiar vice of our people, had become exceedingly rare. Upon this all are agreed, that a mighty change had been wrought. It is about as well agreed that within two or three years the course has been the other way. Now what causes produced these two opposite effects? What causes were at work, and apparently producing them? The reformation was brought about wholly by a system of earnest and persevering appeals to the public opinion, without the least assistance from the law. Societies, public meetings, addresses, and travelling lecturers. These were the agents that were employed to bring it

about—it was accomplished wholly by what in this discussion has been called *moral suasion.* Within a few years an increasing rigor of law has been called in aid of this benevolent design, and the measures of moral suasion have been relaxed. I do not think it necessary to bring facts in proof of these statements—every body knows their truth. I wish to make no invidious remarks; but every one who knows by whom and how the measures of the temperance party are now carried on, and who remember by whom and how the reform was begun and carried forward will percieve at once how much mere moral influence on this subject has declined. The concentrated voluntary action of individuals has subdivided into mere organization. The agents who were before the humble ministers of others, have become the chief of the synagogue; they find it easier to preside and make reports in conventions than to travel about like the mild and pious Hildreth, reasoning upon temperance and beseeching men to be saved. The Temperance men have become a party—and the party has become numerous, strong and well organized; and like all men in power, they love the exercise of power. They have become impatient of opposition, and they would wield the thunder of the law to put it down. Sir, the people feel the difference—they see too much of pride, too much of arrogance in all this. The temperance lectures are deserted—public opinion has lost its tone and its current has turned backward. It is true, it is alarmingly true, that Intemperance has increased, and its increase may be traced back to the time when moral suasion gave way to legislative compulsion. If I were called on to state what was the first error committed in this cause, I should unhesitatingly point to the pledge of total abstinence required of the members of temperance societies. At t hat point persusion was first exchanged for compulsion. I remember well, sir, and I was in a situation to feel the effect of that measure. I believe that very many retired from all open connexion with the cause, when they found that this attempt was made to bind their consciences. They felt that it put an end to all voluntary action, that each man was to be a spy upon his neighbor, and that a connexion with a temperance society after this pledge, gave to it an inquisitorial power over its members. They felt justly that the abstinence that was compelled by a vow would cease to be a virtue—it brought it down from the sublimity of a voluntary sacrifice to the paltry fear of being caught in breaking a promise.

> "No, not an oath; if not the face of men,
> The sufferance of our souls, the times abuse,
> If these be motives weak break off betimes—
> ——————————Unto bad causes swear
> Such creatures as men doubt—but do not stain
> The even virtue of our enterprize,
> To think that or our cause or our performance
> Did need an oath."

If the gentlemen now ask us in earnest what shall be done, we say to them, retire from the lobbies of the Legislature—let the law be restored to what it was when this State was as remarkable for temperance as it had before been for intemperance. Repeal your pledge of total abstinence. Give up your ostentatious city conventions whose influence never reaches the poor creatures that most need your good offices, but only exhaust in expenses the means that would enable you to send out humble, pious and warm hearted preachers of temperance. Go back to that *moral suasion* under which this reform grew up and flourished; abolish all attempts to orce men to be temperate by fear of punishment, or by the still more

futile experiment of hiding from them the intoxicating liquor. Respect the rights and liberties of the temperate, as well as the necessities of the intemperate. It is not true, as your counsel has told you, repeating your own words, that "moral suasion has done its office"; it has not "carried this reform as far as it can go without a change of the law," Sir, moral suasion got tired before it had half done its office—it became satisfied with the wonders it had done, and too indolent to work longer itself, it turned over its unfinished duties to the hands of the law. I defy the proof that earnest, humble and affectionate persuasion has ceased to prevail with the intemperate as much as it ever did. The misfortune is, that we have less of the means employed to produce the effect.

But if moral suasion could not carry the reform farther, it would have been well employed in maintaining it where it was; and now to restore it to that position, would be reward enough for all the efforts of the Remonstrants. It will be time enough for them to say that moral suasion has done its office when they have restored what by its neglect they have allowed to fall into decay. Even then, sir, we would cheer them on to farther exertions in the use of the same means; and when they find those means—the only means their Master used, when his disciples would have called down fire from Heaven,—fail to carry the work farther, they may content themselves with the reflection that they have done all they can, and their successors will find full employment in maintaining what they have done.

Mr. Chairman. I have but one word more to say. THIS LAW WILL BE REPEALED. I feel the strongest conviction that the people will not bear it. It is an encroachment on the rights of the sober and of the temperate. I believe I am as willing as most men to submit to the laws,—but I cannot acquiesce in this. I feel it as an encroachment on my own rights, and I never can cease to oppose it. Personally as well as representing the memorialists I protest against it. I protest against it as an unwarrantable restriction upon the habits of private life. I protest against its inequality as it operates on different classes of the community. I protest against it as tending to introduce perjury and contempt of the laws, and as requiring for its execution the base and corrupting instrumentality of spies and common informers. I protest against it as worse than worthless as a temperance measure; as an abandonment of all regulation and of the moral means that had already wrought a wonderful reformation throughout the land, and the substitution of a system of prohibition and force. I protest against it as absurd in theory and impracticable in execution. Sir, it will be repealed. The question is only whether it shall be done now when a wholesome law of regulation will take the place of it, or hereafter when the public mind has been inflamed by opposition and resistance. You have now the whole subject in your hands. I beseech you, let it not pass out of them until the work is done.

Note—The Committee have now been able to furnish the public with a full and correct report of all the evidence on both sides, and of the arguments on one side, before the Legislative Committee. They did not feel authorized, from the importance of the subject, to omit any portion of it, and this has caused the delay in its preparation and publication. They ask for these pages a candid consideration, and upon that they are content to rest the issue in every fair mind. The argument was conclusive with the Committee who heard it, so far as regulation against prohibition is concerned, for they repealed the former and rejected the latter, in their bill. Another Legislature, it is believed, will be free to act upon this great question, with wisdom, candor and forbearance.